

March 23, 2005

Via Overnight Mail

Public Utility Commission of Oregon
Attn: Filing Center
550 Capitol St. NE #215
PO Box 2148
Salem, OR 97308-2148

Re: ARB 584

Dear Sir or Madam:

Enclosed for filing are the original and five copies of the Response Testimony of Michael Zulevic and the Response Testimony of Elizabeth Balvin on behalf of Covad. Electronic copies were also filed and served on the parties on March 23, 2005.

Please call me if there are any questions regarding this filing. Thank you.

Sincerely yours,

Andrew R. Newell
Counsel for Covad
Communications Company

ARN/jk

Enclosures

cc: Service List

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

ARB 584

In the Matter of)
)
COVAD COMMUNICATIONS)
COMPANY)
)
Petition for Arbitration of an)
Interconnection Agreement with)
Qwest Corporation)

**RESPONSE TESTIMONY OF
MICHAEL ZULEVIC**

**ON ISSUE 1 (COPPER RETIREMENT)
AND ISSUE 5 (REGENERATION)**

**FILED ON BEHALF OF
DIECA COMMUNICATIONS, INC.
D/B/A COVAD COMMUNICATIONS COMPANY**

March 23, 2005

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EXHIBITS

Covad/112 (8 pages)

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1 Q. MR. ZULEVIC, PLEASE IDENTIFY YOURSELF FOR THE
2 COMMISSION.

3 A. My name is Michael Zulevic, and I currently provide consulting services to
4 Covad Communications Company. My business address is 22801 Entwistle
5 Road E., Buckley, Washington 98321.

6 Q. ARE YOU THE SAME MR. ZULEVIC WHO PREVIOUSLY FILED
7 DIRECT TESTIMONY IN THIS ARBITRATION CASE?

8 A. Yes, I am.

9 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

10 A. The purpose of this testimony is to respond to the direct testimony filed by Qwest
11 witnesses Karen Stewart and Michael Norman relating to Arbitration Issues 1
12 (Copper Retirement) and 5 (Regeneration).

13 **ARBITRATION ISSUES**

14 **ISSUE 1: COPPER RETIREMENT: SHOULD QWEST BE PERMITTED TO**
15 **RETIRE COPPER FACILITIES SERVING COVAD'S END USERS**
16 **IN A WAY THAT CAUSES THEM TO LOSE SERVICE?**
17

18 Q. PLEASE STATE WHY THE ENTIRETY OF MS. STEWART'S DIRECT
19 TESTIMONY IS INAPPOSITE TO THE COPPER RETIREMENT ISSUE.

20 A. There are three primary reasons why Ms. Stewart's testimony is inapposite. First,
21 the entirety of her testimony relative to Qwest's legal rights and obligations
22 pertains solely to the copper retirement rules that apply where copper is retired
23 and an FTTH loop is deployed. Specifically, Ms. Stewart relies entirely on
24 Paragraphs 271-284 of the TRO, which address the deployment of FTTH loops by
25 ILECs and any copper retirement activity that results from such FTTH

1 deployment. Because Covad's copper retirement proposal does not apply in that
2 scenario, Ms. Stewart's testimony is irrelevant.

3 Second, the FCC has made clear that there are two absolutely necessary
4 prerequisites that an ILEC must satisfy before it can take advantage of any copper
5 retirement policies and procedures created via the TRO. The first prerequisite is
6 that fiber loops deployed be capable and actually provide enhanced broadband
7 services. As the FCC stated numerous times in the FTTC Reconsideration Order:

8 We further specify that the fiber transmission facility in a FTTC
9 loop must connect to copper distribution plant at a serving area
10 interface from which every other copper distribution subloop also
11 is not more than 500 feet from the respective customer's premises.
12 *We do this to ensure that our unbundling relief is targeted to*
13 *FTTC deployments that are designed to bring increased*
14 *advanced services capability to users, rather than extend to other*
15 *hybrid loop deployments...*¹

16
17 Finally, in order to ensure that our new rules promote the goals of
18 section 706, we tailor unbundling relief *to those FTTC*
19 *deployments specifically designed to bring advanced services to*
20 *users...* we provide those incumbents seeking to avail themselves
21 of this unbundling relief an incentive *to reconfigure their network*
22 *to bring advanced services to the entire geographic area rather*
23 *than permitting them to obtain unbundling relief where, by*
24 *happenstance, there may be an existing loop with 500 feet or less*
25 *copper distribution.*²
26

27 To date, Qwest has provided no evidence or testimony that its fiber
28 deployment is in any way designed to ensure the delivery of enhanced broadband
29 services. In fact, Qwest completely refused to answer data requests posed by
30 Covad that were designed to specifically elicit this information.³

¹ Id., ¶10 (emphasis added).

² Id. ¶ 17 (emphasis added).

³ See Qwest's Responses to Covad Data Request Nos. 6-7, attached hereto as Exhibit MZ-3

1 Q. DO YOU HAVE ADDITIONAL INFORMATION SHOWING THAT
2 QWEST'S FIBER DEPLOYMENT IS DONE FOR REASONS
3 UNRELATED TO THE PROVISION OF BROADBAND SERVICES –
4 ENHANCED OR OTHERWISE?

5 A. Given what I know about the network architecture that Qwest has chosen for
6 purposes of supporting voice and DSL service, the deployment of fiber alone in
7 no way ensures that end users served on an all fiber or hybrid copper-fiber loop
8 can or will receive anything other than plain old telephone service (“POTS”). In
9 other words, while Qwest regularly can and does deploy fiber and the equipment
10 necessary to connect effectively to copper distribution loops, unless Qwest
11 specifically opts to deploy additional equipment capable of supporting DSL
12 service, Qwest’s standard fiber deployment is really only designed to support
13 growth and additional needs for POTS and POTS lines. Qwest’s fiber
14 deployment, standing alone, does not allow Qwest to provide DSL or enhanced
15 broadband capabilities like video. Additionally, because Qwest’s fiber
16 deployment is not made with a specific requirement that the copper distribution
17 loops be of a length that can support DSL, much less video services, Qwest’s fiber
18 deployment is very much oriented towards relieving POTS capacity demands and
19 not to providing broadband services – enhanced (i.e., video) or otherwise (i.e.,
20 DSL).

21 To the extent that Qwest’s fiber deployment is broadband capable, it
22 appears to be the rare exception, rather than the rule that the fiber Qwest has
23 deployed can provide any service other than what’s already available over the all
24 copper loop running between the customer premises and the central office.

1 Finally, given DSL technology that will be available in 4-10 months, all copper
2 loops will also be able to support video services, thereby eliminating entirely any
3 service advantage that Qwest might gain (which is not a given, as I just explained)
4 by virtue of its fiber deployment.

5 Consequently, all the uncontroverted testimony and evidence points to the
6 fact that Qwest's fiber deployment is done solely for the purpose of network
7 maintenance or, more perniciously, to drive competitors off the network. This
8 kind of activity was not designed to be protected in any way, as the FCC made
9 clear.

10 Lest there be any question, Qwest's highest ranking officer, Richard
11 Notebaert, late last year reiterated the fact that Qwest is not and will not engage in
12 any kind of fiber deployment designed to bring enhanced broadband services to
13 existing Oregon consumers:

14 After failing to generate adequate returns by offering TV over
15 fiber-to-copper networks in Colorado and Arizona, the No. 4 Bell,
16 Denver-based Qwest Communications International, Inc. is sitting
17 out the current [fiber deployment] craze. CEO Richard C.
18 Notebaert says he's willing to install fiber only in new housing
19 developments. "When you go in to do a tear up or an overlay, the
20 economics don't work," he says.⁴

21
22 Consequently, while Qwest has notified carriers regularly about copper retirement
23 activity, none of these retirements appear to be resulting in the deployment of
24 additional advanced services to customers, and Qwest has made no pretense at
25 proving otherwise, because it cannot. As the FCC has made clear, maintenance
26 decisions like Qwest's are not protected activity, and certainly should not trump

⁴ Catherine Yang, *Cable vs. Fiber: In the Titanic Battle to Control the Flow of Data to U.S. Households, the Bells Fight Back by Offering Video via Phone Lines*, Businessweek, November 1, 2004.

1 the FCC or this Commission's directive to promote competition and the efficient
2 investment in advanced telecommunications services.

3 **Q. YOU MENTIONED THAT THERE WERE TWO PREREQUISITES TO**
4 **QWEST INVOKING THE PROTECTIONS ASSOCIATED WITH THE**
5 **TRO'S COPPER RETIREMENT RULES. WHAT WAS THE SECOND**
6 **PREREQUISITE?**

7 A. As I alluded to in my prior answer, in the FTTC Reconsideration Order, the FCC
8 made clear that its copper retirement rules and associated unbundling relief were
9 not to further deployment of facilities to enterprise customers, but rather to mass
10 market customers. The FTTC Reconsideration Order makes a number of
11 references to the fact that the deployment incentive originally discussed in the
12 TRO with respect to FTTH loops and then extended to FTTC loops in the
13 Reconsideration Order was granted in order to ensure deployment of enhanced
14 broadband capabilities to mass market customers:

15 "Such a change in our rules is necessary to ensure that regulatory
16 disincentives for broadband deployment are removed for carriers
17 seeking to provide advanced services to *mass market customers*
18 ..."⁵

19
20 "We do not require incumbent LECs to provide unbundled access
21 to new *mass market* FTTC loops for either narrowband or
22 broadband services."⁶

23
24 FCC Chairman Powell in his concurring statement reiterated the fact that
25 the FCC's TRO and associated reconsideration orders were designed to result in
26 benefits to consumers, and not businesses -- "by limiting the unbundling
27 obligations of incumbents when they roll out deep fiber networks *to residential*

⁵ Id., ¶ 9 (emphasis added).

⁶ Id., ¶ 14 (emphasis added).

1 *customers*, we restore the market place incentives of carriers to invest in new
2 networks.”

3 **Q. THE FACT THAT QWEST’S COPPER RETIREMENT LANGUAGE**
4 **DOES NOT EVEN TAKE INTO ACCOUNT THESE TWO**
5 **REQUIREMENTS RENDERS IT FATALLY FLAWED, ISN’T THAT**
6 **ACCURATE?**

7 A. The answer to this question must be “yes.” Regardless of the ultimate outcome of
8 the underlying legal issue, Qwest’s current copper retirement proposal is overly
9 broad and overly inclusive of the retirement scenarios that the FCC intended to
10 protect. Because Qwest nowhere limits its proposal to FTTH (or FTTC)
11 deployment resulting in the actual provision of (1) enhanced broadband services
12 to (2) mass market customers, it cannot withstand legal or commission scrutiny.

13 **Q. QWEST ALSO HAS FAILED TO PROVIDE ANY EVIDENCE THAT ITS**
14 **FIBER DEPLOYMENT WILL PROVIDE SERVICES THAT REFLECT**
15 **AN ENHANCEMENT OVER WHAT CAN BE PROVIDED OVER**
16 **COPPER, HASN’T IT?**

17 A. That is correct. Qwest has provided no evidence that its fiber deployment allows
18 it to provide any enhanced broadband services that aren’t already available over
19 an all copper loop. As stated in my Direct Testimony, there are new, copper-
20 based technologies that will allow carriers to provide video (along with voice and
21 data) over all-copper loops, which places copper on even footing with fiber with
22 respect to the array of broadband services that can be provided. And as Merrill
23 Lynch recently reported, “[d]espite the hoopla surrounding fiber all the way to the
24 end user premises (FTTP), we still believe the regional Bells will first exploit the

1 existing copper plant that supports DSL as much as possible for new services. The
2 adoption of new DSL flavors, such as ADSL. ADSL2+ and VDSL will increase
3 ASP.”⁷

4 The ongoing importance of copper, as a better source for enhanced
5 broadband services than fiber over at least the next few years was affirmed by the
6 New York Times, which noted that the “continued reliance on copper for the final
7 link to the homes of consumers makes sense to some experts, who say
8 improvements in software compression and Internet connection technology make
9 to-the-home fiber unnecessary [pointing] to companies in Japan and South
10 Korea that are already selling high speed internet connections and video over
11 copper networks.”⁸ Thus, far from having any inherent advantage over copper,
12 fiber actually appears to be the less attractive option for broadband purposes over
13 at least the next few years and certainly the term of the parties’ interconnection
14 agreement. As my testimony above indicates, Qwest seems to agree.

15 It would be one thing to allow Qwest to protect new network investment,
16 designed to deliver new services, from new unbundling demands. However, the
17 reality is that Qwest proposals will allow it to close its network and eliminate
18 competition as communities grow, and require additional feeder capacity to
19 provide basic services. Those customers would then be left without any
20 competitive choices under Qwest’s proposal, and with no new services.

21 **Q. PLEASE CORRECT MS. STEWART’S MISUNDERSTANDING**
22 **REGARDING QWEST’S SUPPOSED UNRESTRICTED RIGHT TO**
23 **RETIRE COPPER LOOPS.**

⁷ Merrill Lynch, “Telecom Equipment,” October 8, 2004.

1 A. Certainly. Ms. Stewart appears to espouse the position that Qwest is free to retire
2 copper loops without restriction. That is just not correct. First, the copper
3 retirement rules discussed by the FCC and Ms. Stewart in her testimony address
4 copper retirement resulting in FTTH or FTTC loops. Since Qwest isn't deploying
5 those types of loops⁹ and the Covad proposal does not apply in that scenario, there
6 actually is no affirmative permission granted by the FCC to Qwest (or the other
7 ILECs) to retire copper. Moreover, because of the economic and consumer
8 impacts that flow from copper retirement, the Commission must carefully
9 scrutinize these impacts to ensure that consumers are not harmed by Qwest's
10 unilateral retirement of copper feeder plant. Finally, the FCC made clear that any
11 and all state requirements pertaining to copper retirement would continue to
12 apply, regardless of the impact they might have on federal policies encouraging
13 the deployment of fiber -- "any state requirements that currently apply to an
14 incumbent LEC's copper loop or copper subloop retirement practices will
15 continue to apply."¹⁰ Thus, the FCC has made clear that Oregon's copper
16 retirement rules and policies continue to apply, notwithstanding the federal rules
17 established by the FCC.

18 **Q. EXPLAIN WHY MS. STEWART IS INCORRECT IN ASSERTING, AT**
19 **PAGE 9 OF HER DIRECT TESTIMONY, THAT THE FCC HAS**
20 **REJECTED CONDITIONS SIMILAR TO COVAD'S PROPOSAL.**

21 A. Ms. Stewart mistakenly suggests that Covad's copper retirement proposal was
22 already rejected by the FCC. That is just not correct. If you actually look at the

⁸ Ken Belson, *Phone Line Alchemy: Copper to Fiber*, The New York Times, October 11, 2004.

⁹ See Qwest's Responses to Covad Data Request Nos. 1-4, attached hereto as Exhibit MZ-6.

¹⁰ TRO, ¶ 271.

1 copper retirement proposals rejected by the FCC in the TRO, you will see that
2 they are very different than the proposal that Covad makes, and go far beyond
3 what Covad requests here. For example, the High Tech Broadband Coalition and
4 the Telecommunications Industry Association proposed that an ILEC be allowed
5 to retire copper if and only if the ILEC provided access to those fiber broadband
6 facilities for both new and existing customers via a voluntary agreement that
7 would be available on a non-discriminatory basis to other carriers.¹¹ That is a far
8 cry from what Covad proposes here. Allegiance went even farther, arguing that
9 ILECs should not be allowed to retire copper loops at all. Clearly, Covad's
10 proposal is much more limited in scope, purpose, and duration. It has the
11 advantages of maintaining existing service and customer choice envisioned by the
12 FCC, without the drawbacks of the proposals discussed above, which may have
13 discouraged carriers' investment in next generation facilities. Because of the
14 consumer and competitive good inherent in the Covad proposal, it should be
15 adopted by the Commission.

16 **Q. PLEASE EXPLAIN WHY MS. STEWART'S SUPPOSED CONCERNS**
17 **REGARDING THE AMBIGUITY OF COVAD'S "ALTERNATIVE**
18 **SERVICE" PROPOSAL IS A RED HERRING.**

19 A. Qwest attacks Covad's alternative service proposal, essentially on three
20 grounds: first, it has no legal basis (this issue is addressed above and in my
21 Direct Testimony); second, it is so vague that it gives no direction to Qwest as

¹¹ See Comments of the High Tech Broadband Coalition, April 5, 2002, *In the Matter of the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98, and 98-147, at pages 36-37; Comments of the Telecommunication Industry Association, April 5, 2002, *In the Matter of the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98, and 98-147, at pages 17-18; Comments of Allegiance Telecom,

1 to how to comply with its terms; and third, that it would deny Qwest the right to
2 recover its costs, as required by 252(d)(1). These arguments do not survive
3 serious analysis.

4 Qwest's second point, that the proposal is not properly defined, fails to
5 take into account that the two critical characteristics of any alternative service,
6 service quality and price stability, are clearly defined. Contrary to Qwest's
7 protestations otherwise, clear and obvious metrics exist to determine whether a
8 given customer's service is "degraded" by the move to an alternative service:
9 availability of the connection, and the speed of that connection, measured in
10 kilobits per second (kbps). Qwest's professed ignorance as to what Covad's
11 proposal means is questionable at best, given its adamant refusal to discuss any
12 of these terms and the multitude of situations in which language in
13 interconnection agreements has obvious, though not precisely explained
14 implications.

15 One need not look far to find an example- Qwest's own proposal
16 regarding copper retirement contains equally general language when it states that
17 "Qwest and CLEC will jointly coordinate the transition of current working
18 facilities to the new working facilities so that service interruption is held to a
19 minimum." This language can be read to mean that Qwest will provide access
20 to fiber feeder and distribution facilities, even FTTH loops, or it can be read to
21 mean that Qwest will provide something less. Also, what constitutes
22 "minimum" service disruption under Qwest's proposal? This language is open

1 to a certain level of interpretation, perhaps even a greater level than Covad's
2 proposed language.

3 **Q. WHAT ABOUT MS. STEWART'S CLAIM THAT COVAD'S**
4 **ALTERNATIVE SERVICE PROPOSAL WILL NOT ALLOW QWEST TO**
5 **RECOVER ITS COSTS?**

6 A. Ms. Stewart claims that Covad's proposal fails to provide Qwest with a means
7 of recovering its costs for providing an alternative service. Implicit in this
8 argument is an assumption that whatever means Qwest uses to provide the
9 service will be more expensive than the current method of providing service to
10 Covad. As an example of this, Qwest compares the rate it is permitted to
11 charge for line sharing in Oregon (almost \$8 – rate includes two ITPs, line
12 sharing OSS, and HFPL; the rate does not include splitters, collocation or
13 transport) to the more expensive (yet somehow still undefined) alternative
14 service. This is nothing more than a collateral attack on this Commission's
15 rate for line sharing elements.

16 Ms. Stewart's statements also ignore the fact that all of the rates for its
17 wholesale services are set on the basis of *average* costs. To the extent certain
18 alternative arrangements raise Qwest's actual costs, this is best addressed in a
19 review of Qwest's wholesale rates. Some specific arrangements may be more
20 expensive, some less expensive. Qwest's overly literal interpretation of section
21 252(d)(1) would logically lead to the conclusion that every wholesale
22 arrangement that, for whatever reason, falls below the average cost of providing

1 that element would violate the Act. Such an analysis would make it impossible
2 for this Commission to set wholesale rates at all.

3 In addition, it is difficult to understand how the deployment of state-of-
4 the-art, or at least improved, fiber technology could result in higher network
5 costs. For years, Qwest and the other ILECs have decried the unfairness of
6 TELRIC pricing, arguing that its assumption of state-of-the art network
7 components unfairly *reduces* their wholesale rates. Qwest now turns that
8 argument on its head, arguing that the same state-of-the-art network is actually
9 more expensive to operate.

10 Covad's proposal fundamentally stands for the proposition that Qwest
11 cannot unilaterally change its wholesale rates by re-configuring its network. If
12 Qwest believes there are benefits to such a reconfiguration, it should be able to
13 perform it, but allowing Qwest to shift costs of reconfiguration onto its
14 competitors will distort its decisions, and replace marketplace thinking with
15 regulatory calculations.

16 **Q. QWEST HAS ALSO SUGGESTED IN OTHER ARBITRATIONS THAT**
17 **COVAD CAN SIMPLY RESELL QWEST DSL WHEN ITS COPPER**
18 **RETIREMENT ACTIVITIES PULL THE RUG OUT FROM**
19 **UNDERNEATH EXISTING COVAD CUSTOMERS. EXPLAIN WHY**
20 **THAT WILL NOT WORK.**

21 A. The answer is one of simple economics (discussed below and in my Direct
22 Testimony) and significant barriers to actual use. With respect to the economics
23 issue, as the FCC apparently concluded in the TRO, a carrier providing ADSL

1 service (which is the primary service type that would be impacted by Qwest's
2 copper retirement) earns \$18 in revenue per customer.¹² When you consider the
3 cost of the ISP service – generally about \$8, none of the resale options Qwest
4 purportedly makes available would allow Covad to provide service without its
5 costs exceeding its revenue by a significant amount.

6 **Q. COVAD COULD COLLOCATE A REMOTE DSLAM TO SERVE**
7 **CUSTOMERS IMPACTED BY A FIBER FEEDER REPLACEMENT.**
8 **WHY ISN'T THAT A VIABLE OPTION?**

9 A. Ms. Stewart's comment flies in the face of reality. Qwest has testified openly in
10 other proceedings that it would cost at least \$90,000 to collocate a remote
11 DSLAM. No provider, whether ILEC or CLEC, can afford to expend that kind of
12 capital to support service to a small handful of customers particularly given
13 industry average churn rates that show customers change providers about every
14 two years. It would only make sense to make that kind of capital investment if
15 the carrier knew or reasonably could anticipate, *in advance*, that it would be able
16 to obtain and retain enough customers to make the investment a rational one.
17 This, of course, is the essence of capital investment decision-making, since every
18 carrier makes that kind of evaluation and judgment before committing capital to
19 any kind of project.

20 That rational – and in today's economy, absolutely necessary – kind of
21 decision-making is not a possibility here, given that (1) Covad would not be able
22 to make that kind of judgment before the need for a remote DSLAM arose; and
23 (2) by the time Covad could collocate a remote DSLAM, the fiber feeder would

¹² TRO, n.807.

1 be in place and the customers would have already lost their Covad service. For
2 these same reasons, the supposed ability to coordinate a transition of service from
3 all copper to a hybrid loop is not realistic, given the time and monetary constraints
4 that would result in the disconnection of the customer before any supposed
5 transition could possibly occur.

6 I must emphasize here that Covad is not involved in the Qwest network
7 planning process, so Covad would rarely, if ever, have the amount of time
8 necessary to undertake the kind of decision-making necessary to justify, if that's
9 even possible, the investment in a remote DSLAM.

10 **Q. MS. STEWART ALSO CLAIMS THAT QWEST'S COPPER**
11 **RETIREMENT NOTICE IS LEGALLY SUFFICIENT. PLEASE**
12 **EXPLAIN WHY IT IS NOT.**

13 A. 47 C.F.R. § 51.327 prescribes the "minimum" standards for notices of network
14 changes. Qwest's copper retirement notices do not meet these "minimum"
15 standards. For instance, notices must, according to the rule, include the
16 "location(s) at which the changes will occur"¹³ as well as the "reasonably
17 foreseeable impact of the planned changes."¹⁴

18 Qwest chooses to read these requirements in an unreasonably narrow
19 fashion, and has declined to provide such vital information as what Covad
20 customers, if any, will be impacted by the retirement project. The vague notices
21 issued by Qwest (see Exhibit Covad/103, attached to my Direct Testimony) are
22 useful only as a starting point for a major research project to determine whether a
23 given retirement will impact Covad's customers. In response to each and every

¹³ 47 C.F.R. § 51.327(a)(4).

1 notice of a copper retirement project, Covad would have to determine whether
2 any of its customers would actually be affected and it is not even clear that, with
3 the information provided, we can actually do that.

4 Any notice that can be read to comply with the FCC's rules must
5 specifically inform competitive LECs whether the retirement threatens service to
6 its existing customers. The FCC rule clearly places the burden on ILECs to
7 determine the "reasonably foreseeable impact" of its retirements. Qwest's
8 interpretation of this language, which would not require specific notice of the
9 customers affected, is so devoid of substance that it must be rejected as an
10 unreasonable interpretation of the rule.

11 Furthermore, the FCC's rules regarding network modifications clearly
12 require a description of the type of changes planned (Information provided to
13 satisfy this requirement must include, as applicable, but is not limited to,
14 references to technical specifications, protocols, and standards regarding
15 transmission, signaling, routing, and facility assignment as well as references to
16 technical standards that would be applicable to any new technologies or
17 equipment, or that may otherwise affect interconnection)...¹⁵

18 Covad's notice proposals embody this requirement, by specifying that
19 notices contain information regarding "old and new cable media, including
20 transmission characteristics; circuit identification information; and cable and pair
21 information."¹⁶ Covad believes the information it seeks, and which Qwest refuses
22 to provide, is clearly within the scope of the FCC rule. Not only is it within the

¹⁴ 47 C.F.R. § 51.327(a)(6).

¹⁵ 47 C.F.R. § 51.327(a)(5).

¹⁶ Covad Proposed Section 9.1.15.

1 scope of the rule, it is necessary to lend any meaning whatsoever to the notice
2 requirement. And as stated in Ms. Balvin's Direct Testimony, there is nothing
3 burdensome about requiring Qwest to provide the categories of information
4 specified by Covad. Qwest has this information in its possession; it just chooses
5 not to share it.

6 **Q. YOU STATED THAT ANY INVESTIGATION OF THE QWEST COPPER**
7 **RETIREMENT NOTICES WOULD BE A "MAJOR RESEARCH**
8 **PROJECT." PLEASE ELABORATE.**

9 A. Qwest has suggested elsewhere that it would be relatively simple for Covad to
10 determine what kind of impact to its customer base would result from a copper
11 retirement notice. That statement is flat out wrong.

12 We took a December 9, 2004 copper retirement notice from Qwest –
13 attached hereto as Exhibit Covad/112 which is network disclosure announcement
14 #511. Per Ms. Stewart's testimony in the Utah arbitration, we first contacted the
15 three individuals identified on the notice and attachment (Eric Yohe, Elena
16 Donaghy and Shirley Tallman) since Ms. Stewart represented that those
17 individuals would be able to answer additional questions that we might have
18 regarding Covad specific impacts. Only one of the three points of contact
19 responded, and even then was not able to provide any information regarding
20 Covad-specific impacts, directing Covad instead to use Qwest's raw loop data
21 tool.

22 Based on Qwest's refusal to provide any information about Covad-specific
23 impacts, Covad then undertook the effort, for just one of the retirements identified
24 (there are a total of 32 retirements identified on just this one notice), to determine

1 whether there were any impacts to Covad's customer base. For just one of the
2 thirty two retirements identified, it took 4 man hours to determine that there were
3 no impacts to Covad's customer base. If Covad were required to review all 32
4 impacted central offices included in just this one notice, it would take 128 hours
5 (i.e. sixteen 8 hour days) to determine if there were any impacts at all.

6 Clearly, foisting this enormous burden onto Covad is unreasonable and
7 inappropriate when Qwest can easily determine, the carriers and services
8 impacted by a copper retirement.¹⁷ It appears that, despite the ease with which this
9 information can be provided, Qwest has subsequently determined it will no longer
10 provide this information. I say this based upon Ms. Stewart's testimony at
11 hearing in the Utah arbitration proceeding between Covad and Qwest in
12 December 2004, in which she stated that Qwest's retirement notice process "has
13 evolved," and Qwest no longer provides information regarding a retirement's
14 impact on the CLEC community.¹⁸ The unreasonableness of Qwest forcing
15 CLECs to undertake this enormous effort is only underscored when one considers
16 the fact that Qwest generally would have several months to determine what, if
17 any, impacts exist, whereas CLECs might have as few as 9 business days.¹⁹

¹⁷ An e-mail from Shirley Tallman of Qwest to Elizabeth Balvin of Covad explains the process that Qwest can undertake to identify CLEC lines impacted by a retirement. This e-mail was attached to my Direct testimony as Exhibit Covad/106.

¹⁸ Utah Public Service Commission Docket No. 04-2277-02, *In the Matter of the Petition of DIECA Communications, Inc., D/B/A Covad Communications Company, for Arbitration to Resolve Issues Relating to an Interconnection Agreement With Qwest Corporation*, Hearing Transcript (December 8, 2004) at Page 125, line 9 through 126, line 6. A copy of this portion of the Utah transcript is attached to my testimony as Exhibit Covad/113.

¹⁹ 47 C.F.R. § 51.333(c).

1 **Q. IF IDENTIFYING COVAD CIRCUITS IMPACTED BY A RETIREMENT**
2 **IS A MAJOR EFFORT FOR COVAD, WOULDN'T IT ALSO BE A**
3 **MAJOR EFFORT FOR QWEST?**

4 A. As a matter of fact, it is not. In my time as a central office technician for U S
5 West, I worked on many cable replacement projects. Most of the information
6 Covad is asking for here was provided to us (the technicians) well ahead of the
7 actual field work. Specifically, the Circuit ID, cable pair, type of circuit and cable
8 gauge were all provided. This information is probably more readily available
9 today, given upgrades in Qwest's systems, and more ready electronic access to
10 Qwest's internal databases.

11 **Q. WHY DO YOU SAY THAT QWEST MIGHT HAVE SEVERAL MONTHS**
12 **TO DETERMINE THE IMPACTS OF A COPPER RETIREMENT?**

13 A. The copper feeder that Qwest is retiring is virtually always the result of routine
14 network maintenance or requirements for additional POTS capacity. Given my
15 thirty years' experience with Qwest (formerly US WEST) and its network
16 planning processes, it would take a minimum of 6 months, and more typically
17 over 12 months, for Qwest to (1) determine that a particular feeder route should
18 be retired; (2) seek the level of approval necessary for the kind of capital
19 expenditure that a copper retirement with fiber replacement would require; and
20 (3) implement the copper retirement with feeder replacement. It is beyond
21 dispute that a part of this planning process would include a determination of the
22 impacts on Qwest's retail customers which, according to Ms. Stewart, could
23 easily include an identification of CLEC customer impacts – and all of which
24 could be done with enough time to allow for alternative services to be provide to

1 both retail and wholesale customers. Rather than do this, though, Qwest chooses
2 to provide so little information to, and impose such a significant burden on
3 CLECs as to make the notices they provide worthless.

4 When Qwest feels there is a need to make a significant capital expenditure
5 in the existing network, they undertake a study to evaluate multiple alternatives
6 including what is called "PMO" or present method of operation and compares the
7 results of the study prior to submitting the proposal for approval. The following
8 elements are taken into consideration when performing what used to be called a
9 "CUCRIT" (capital utilization criteria) evaluation:

10
11 PMO DATA

12 -CURRENT REVENUE

13 -CURRENT EXPENSE

14 -REGULATORY REQUIREMENTS

15
16 ALTERNATIVE (S) DATA

17 -ESTIMATED EXPENSE (SAVINGS OVER PMO)

18 -ESTIMATED REVENUE (ADDITIONAL DUE TO NEW SERVICE OR
19 POSSIBLY ACQUISITION OF COMPETITORS CUSTOMERS)

20 -CAPITAL REQUIREMENT

21 -REGULATORY REQUIREMENTS

22
23 The CUCRIT study can then vary things like the time periods, cost of
24 money and inflation rates to determine the best proposal based upon the resulting

1 NPVS. Covad's proposal would simply require that Qwest include a small
2 negative amount in the expense category to account for any additional cost they
3 may incur for providing us with an alternative service. When a typical feeder
4 replacement would result in a capital expenditure in excess of \$1,000,000 it is
5 quite obvious that a small expense like the continuance of Covad service would
6 have little impact on this type of decision. Further, expense savings could easily
7 amount to over \$50,000 a year.

8 **ISSUE 5: REGENERATION: SHOULD QWEST PROVIDE**
9 **REGENERATION BETWEEN CLEC COLLOCATIONS, AND**
10 **WHAT, IF ANYTHING, SHOULD QWEST BE ALLOWED TO**
11 **CHARGE COVAD FOR REGENERATION?**
12

13 **Q. DO YOU AGREE WITH MR. NORMAN'S INTERPRETATION OF**
14 **QWEST'S LEGAL OBLIGATIONS REGARDING REGENERATION?**

15 A. I do not. Qwest must perform CLEC to CLEC cross-connects as required by FCC
16 rules. Indeed, as the FCC stated in its Fourth Report and Order,

17 We find that pursuant to Section 201 that it would be unjust and
18 unreasonable for an incumbent LEC to refuse to provision cross-
19 connects between collocated competitive LECs. We also find that,
20 in the alternative, such a refusal would be unjust, unreasonable and
21 discriminatory within the meaning of Section 251(c)(6).²⁰
22

23 At its most fundamental, this issue is not whether Qwest must provide
24 CLEC to CLEC cross-connects (Qwest surely has to agree that it must do so), but
25 rather whether Qwest must provide regeneration for that CLEC to CLEC cross-
26 connect in order to ensure that the signal traveling from one CLEC collocation
27 space to a different collocation space maintains the appropriate specifications. I
28 believe that law, logic and technical issues dictate that Qwest is under an

²⁰ *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*,
CC Docket No. 98-147, FCC 01-204, Fourth Report and Order (2001) at ¶ 59.

1 obligation to provide CLEC to CLEC regeneration on the same terms and
2 conditions as for ILEC to CLEC regeneration.

3 **Q. WHAT LAW AND LOGIC ARE YOU RELYING UPON?**

4 A. While I am not a lawyer, my understanding is that the FCC's Fourth Report and
5 Order makes very clear what Qwest's obligations are with respect to CLEC to
6 CLEC cross-connects and, by extension, CLEC to CLEC regeneration. In the
7 Fourth Report and Order, the FCC reconfirmed the fact that ILECs must provision
8 cross-connects for CLECs²¹ or, at a minimum, allow CLECs to self-provision
9 those cross-connects.²²

10 More importantly, for purposes of resolving the regeneration dispute, the
11 FCC made clear that this legal requirement to provision CLEC cross-connects
12 was made pursuant to Section 251(c)(6) of the Act. What this means from a
13 decisional perspective is key. Section 251(c)(6) is the section of the Act that
14 addresses collocation and which affirmatively requires that ILECs permit CLECs
15 to collocate in a central office in order to interconnect with other carriers and to
16 access UNEs. There is no doubt that ILEC to CLEC cross-connects are designed
17 specifically to meet these statutory purposes. And since the FCC grounded its
18 authority to require CLEC to CLEC cross-connects in Section 251(c)(6), CLEC to
19 CLEC cross-connects likewise are designed to fill the same purposes and must

²¹ *Id.*

1 have all the same attributes and properties, such as regeneration, that an ILEC to
2 CLEC cross-connect would have.

3 A fundamental fact underlying regeneration is that it is generally provided
4 to ensure that carriers can actually interconnect and access UNEs at applicable
5 industry standards. As a consequence, since CLEC to CLEC cross-connects serve
6 the identical purpose as an ILEC to CLEC cross-connect, they should be supplied
7 with regeneration (just as an ILEC to CLEC cross-connect is) when necessary to
8 ensure appropriate technical signals on the same rates, terms and conditions.

9 The FCC left no room for question on this point. Because a Section
10 251(c)(6) obligation carries with it the obligation that Qwest act in a non-
11 discriminatory manner when provisioning collocation elements such as cross-
12 connects, Qwest cannot provide a particular service, like regeneration, for one
13 Section 251(c)(6) cross-connect (here, ILEC to CLEC cross-connects) and then
14 refuse to provide regeneration on the same rates, terms and conditions for another
15 type of Section 251(c)(6) cross-connect (here, CLEC to CLEC cross-connects).
16 To find otherwise would result in collocation, interconnection and access to UNEs
17 that is different from (i.e. inferior) to the quality of the interconnection and access
18 Qwest accords to itself and therefore would be discriminatory. Moreover, since
19 the FCC has already previously defined the requirement of “equal in quality”

²² Interestingly, the entirety of the FCC’s discussion on this issue was not whether allowing CLECs to provision cross-connects themselves relieved ILECs of the obligation to provision cross-connects for CLECs (which is what Qwest suggests) but rather addressed the fact that the FCC could not *require* ILECs to permit CLECs to self-provision CLEC to CLEC cross-connects. Regardless of whether Qwest can avoid provisioning the cross-connect itself by allowing CLECs to self-provision a cross-connect, the FCC’s conclusion that Section 251 gave it the authority to require Qwest to provision CLEC to CLEC cross-connects ultimately means that any such cross-connect must be practically, realistically and technically the same as an ILEC to CLEC cross-connect. If not, then Qwest has failed to comply with the non-discrimination requirements of Section 251. In real world terms, this means that the CLEC to CLEC cross-connect must be made available on the same rates, terms and conditions as ILEC to CLEC cross-connects.

1 interconnection as a requirement that Qwest design interconnection facilities to
2 meet the *same technical criteria and service standards, including transmission*
3 *standards*, that are used within the Qwest network²³, there is no legitimate or
4 good faith reason to treat CLEC to CLEC regeneration on different rates, terms
5 and conditions than an ILEC to CLEC regeneration.

6 **Q. YOU ALSO MENTIONED THAT THERE ARE TECHNICAL REASONS**
7 **FOR REQUIRING QWEST TO PROVIDE THE REGENERATION**
8 **RATHER THAN CLECS, AS QWEST SUGGESTS SHOULD OR COULD**
9 **HAPPEN.**

10 A. Let me provide a little context here. Qwest has stated that it will make available
11 regeneration as a finished service rather than as a wholesale product subject to
12 TELRIC pricing standards and the review of this Commission. As I explained
13 above, that would violate Qwest's obligations under Section 251, and as I
14 explained in my Direct Testimony, is cost-prohibitive.

15 Qwest poses as an alternative that CLECs provide regeneration
16 themselves, either as the signal leaves the collocation of one CLEC, as it arrives at
17 the second collocation space, or at both ends of the cross-connection. Again, as I
18 explained in my Direct Testimony at page 43, the most technologically efficient
19 and cost-effective way to regenerate a signal is via a mid-span boost, which is
20 precisely what Qwest does when regeneration is required for an ILEC to CLEC
21 cross-connect. In fact, if the cable length that will be used to provide a DS3 circuit
22 exceeds about 600 feet, which is fairly common in large multi-floor central
23 offices, regeneration **must** be done at a mid-point and cannot possibly be

²³ *Local Competition Order*, ¶224.

1 transmitted at a high enough level to reach the other end without risking “bleed
2 over” into adjacent cabling.

3 **Q. WHAT DO YOU MEAN WHEN YOU SAY THE SIGNAL WILL “BLEED**
4 **OVER” INTO ADJACENT CABLING?**

5 A. What I mean is that the Covad-regenerated signal would cause digital cross-talk
6 and lead to spectrum interference with the signals being transmitted over all
7 adjacent transmission cables using the same cable racking, such that the signals
8 transmitted by other carriers are completely “scrambled.” In other words, the
9 Covad-regenerated signal would disrupt the communications network of those
10 carriers, which may also include Qwest. Just as there are specifications requiring
11 regeneration over certain cable lengths, there are also specifications around how
12 high a signal level can be transmitted in order to maintain the integrity of the
13 network.

14 **Q. MR. NORMAN STATES ON PAGE 11 THAT IN A CLEC-TO-CLEC**
15 **CONNECTION, QWEST HAS NO CONTROL OVER OR**
16 **INVOLVEMENT WITH THE FACILITIES, IS THIS TRUE?**

17 A. Absolutely not. Qwest has a great deal of control over the placement of CLECs in
18 collocation spaces within the central office. While I agree that Qwest currently
19 provisions collocation requests on a first come, first served basis, Qwest reserves
20 space for itself prior to consideration of CLEC applications, which results in
21 Qwest’s ability to dictate all of the locations that will then be available to CLECs
22 for collocation. A first come, first served policy does not overcome the space
23 reservation and allocation decisions Qwest has already made; it simply allows the
24 CLEC to take the best of the space that remains available at the time it submits its

1 application. Consequently, before collocators even enter the picture, Qwest has
2 already made some critical decisions that may result in regeneration being
3 required by CLECs. There is nothing that a CLEC can do about that.

4 Perhaps more importantly, Mr. Norman's claim that Qwest has no
5 involvement with the facilities ignores the fact that both collocators involved in a
6 CLEC-to-CLEC connection are collocated in a Qwest central office, at
7 considerable expense, and also purchase a variety of UNEs from Qwest. It is the
8 telecommunications traffic originated, or terminated, over those UNE facilities
9 that is being moved over CLEC-to-CLEC connections. In other words, CLEC-to-
10 CLEC connections are a critical component in ensuring that customers receive
11 local services provided over UNEs, and ensuring that CLECs can provide the
12 services those customers wish to buy. Qwest is undoubtedly involved in this
13 process, and derives a great deal of revenue from it. In fact, Covad is Qwest's
14 largest collocation customer, and its total monthly payments to Qwest average
15 almost \$1,000,000.00.

16 **Q. WHAT ABOUT THE FACT THAT COVAD CAN DO A WALK**
17 **THROUGH AHEAD OF TIME AND REQUEST THAT IT BE PLACED IN**
18 **A PARTICULAR LOCATION IN A CENTRAL OFFICE?**

19 A. As I stated above, while Qwest provisions collocation applications on a first
20 come, first served basis and permits CLECs to do a walk through to evaluate
21 space, these activities only occur *after* Qwest has made its own space allocation
22 and reservation decisions to most effectively meet its needs. As I stated above,
23 this right does not undo or overcome decisions Qwest has *already made* with
24 respect to where it will place its own equipment and reserve space for future

1 growth. Now, if a walk through were to result in Qwest relinquishing its own
2 currently used or reserved space to a CLEC, then I might be inclined to agree with
3 Mr. Norman's testimony. But, since that is not the case and CLECs must simply
4 select the best of Qwest's "leftovers", I fundamentally disagree with Mr.
5 Norman's suggestion that CLECs control space allocation decisions.

6 **Q. MR. NORMAN CLAIMS, IN HIS DIRECT TESTIMONY, THAT COVAD**
7 **CAN SELF-PROVISION REGENERATED CLEC-TO-CLEC**
8 **CONNECTIONS. IS THIS TRUE?**

9 A. Not in any realistic sense, and in many circumstances, it is absolutely not true.
10 Mr. Norman argues that Covad could order a new collocation space for the
11 placement of regeneration equipment to complete the connection. As I detailed in
12 my previous testimony, the costs of an entirely new collocation space would
13 prohibit Covad from connecting with another CLEC. These costs have nothing to
14 do with the regeneration equipment itself, or with the other costs related to the
15 connection. They are additional costs that Qwest does not incur when it chooses
16 to cross connect with a CLEC in one of its central offices.

17 **Q. IS COVAD'S ARGUMENT THAT QWEST SHOULD ALWAYS HAVE TO**
18 **PROVISION PRODUCTS IF IT CAN DO SO CHEAPER THAN COVAD**
19 **CAN?**

20 A. Absolutely not. The telecommunications market is full of examples of carriers
21 who can, for whatever reason, accomplish certain tasks more efficiently than
22 other carriers. That is a function of a free market economy, and is an important
23 part of what makes competition work for consumers. For instance, Qwest can
24 probably provision a cross connection in its central office that doesn't require

1 regeneration more efficiently than Covad can, because of scale economies,
2 dedicated on-site central office technicians, and better familiarity with its central
3 office architecture. This is completely different from a situation where
4 regeneration is required. If regeneration is required, Covad will not always be
5 able to place a new collocation to provide the regeneration, and even when it
6 could, it could not do so at a price that could ever be justified. This is not a
7 function of the cost of regeneration equipment or the cost of cabling to Covad, it
8 is a function of Qwest's collocation policies, which do not provide for the
9 placement of this equipment on reasonable terms.

10 **Q. HOW IS THAT DIFFERENT THAT A NORMAL COST ADVANTAGE**
11 **BETWEEN COMPETITORS?**

12 A. It is different because Qwest is in control of the central office, it is in a position to
13 impose costs on Covad and other CLECs that it does not impose on itself. In
14 other words, it can discriminate against its competitors, and erect barriers to entry.
15 To draw an analogy, imagine two rival trucking companies. Company Q not only
16 runs the largest trucking company in the country, but they also own every gas
17 station on the interstate highway system. If Company Q were to refuse to allow
18 other trucking companies, such as Company C, to use its gas stations, it would
19 effectively reduce or eliminate competition. This would clearly be anti-
20 competitive behavior. This is an entirely different situation that if many
21 companies owned gas stations on the highway, and Company Q simply offered its
22 affiliated trucking company discounted fuel. In that situation, Company C could
23 make arrangements to obtain its fuel somewhere else, in an open market. If it
24 ended up paying more for its fuel than Company C, that would not necessary be

1 due to anti-competitive behavior by Company C. In my mind, that is the
2 difference between a cost advantage and a discriminatory barrier to entry.

3 To apply this analogy to the current issue, Qwest owns all of the gas
4 stations, and is arguing that Covad is free to build its own stations on space that it
5 leases from Qwest at rates that make the project impossible. This is clearly anti-
6 competitive.

7 **Q. ARE YOU CONVINCED BY MR. NORMAN'S ARGUMENT THAT**
8 **COVAD CAN HAVE A NEW COLLOCATION SPACE CONSTRUCTED**
9 **AT WHOLESALE RATES?**

10 A. No. While this may sound theoretically possible, my previous testimony details
11 the actual costs of this solution. Even when the space could be provisioned,
12 which is by no means guaranteed, those costs are ridiculous on their face. It is
13 inefficient to the point of being impossible. Mr. Norman is essentially asking the
14 Commission to ignore the practical situation and engage in an unrealistically
15 narrow reading of the FCC's rules.

16 **Q. ARE YOU REFERRING TO THE FCC'S RULE ON CLEC-TO-CLEC**
17 **CONNECTIONS, AND SPECIFICALLY THE SELF PROVISIONING**
18 **EXCEPTION RELIED UPON BY QWEST?**

19 A. Yes. Mr. Norman argues that 47 C.F.R. § 51.323(h)(1) relieves Qwest of any
20 obligation to provide a cross connection between CLECs if Qwest allows those
21 CLECs to provision it for themselves. This position ignores the fact that the
22 *Fourth Advanced Services Order* was clear in requiring that CLEC-to-CLEC
23 connections be required on terms that met the requirements of section 251(c)(6) of
24 the Act: they must be made available on pricing terms and conditions that are

1 just, reasonable and non-discriminatory. Qwest seems to argue that the FCC's
2 self-provisioning exception overrules the standards set forth in section 251(c)(6),
3 because he makes no attempt to show how their language complies with this
4 section of the Act.

5 At the time the FCC's *Fourth Advanced Services Order* and resulting rules
6 were issued, Incumbent LECs were refusing to allow any connections between
7 CLEC equipment, even between adjacent collocation spaces. The FCC's intent,
8 in my view, was to make sure that CLECs could connect with each other on
9 reasonable terms. I don't think the FCC envisioned at the time that an Incumbent
10 LEC would ever allow CLECs to provision their own connection that spanned the
11 type of distances that would require regeneration, because those connections
12 would almost always traverse common areas or ILEC-controlled areas in the
13 central office. At the time, ILECs were refusing to allow CLECs to build these
14 connections, and the D.C. Circuit had agreed with the ILECs on this point. It was
15 simply not the problem the FCC set out to solve in the order.

16 **Q. IS THIS MERELY SPECULATION ON YOUR PART, OR IS THERE**
17 **CONCRETE EVIDENCE TO SUPPORT THIS POSITION?**

18 A. I believe there is concrete guidance on this issue in the *Fourth Advanced Services*
19 *Order*, and the Washington Utilities and Transportation Commission recently
20 agreed. In assessing the FCC's cross connection rule, in light of the discussion in
21 the *Fourth Advanced Services Order*, they stated:

22 The FCC addressed the nature of the exception to the rule only in a
23 footnote. Noting that there was no statutory authority for requiring
24 LECs to allow CLECs to self-provision cross-connections, the
25 FCC stated that CLEC self-provisioning imposes less of a burden
26 on ILEC property when the cross-connection is between adjacent
27 collocation space, "than when the cross-connect would traverse

1 common areas of the incumbent LEC's premises." The FCC
2 encouraged ILECs "to adopt flexible cross-connect policies that
3 would not prohibit competitive LEC-provisioned cross-connects *in*
4 *all instances*." The FCC appeared to try to avoid imposing
5 unnecessary burdens on ILECs in providing cross-connections to
6 adjacent CLEC collocation facilities, where CLECs can easily self-
7 provision the connection. On the other hand, the FCC
8 distinguished the type of situation present in this arbitration, *i.e.*, a
9 cross-connection that would traverse common areas and make use
10 of a distribution frame.²⁴

11
12 **Q. MR. NORMAN POINTS OUT THAT QWEST DOES OFFER AN ACCESS**
13 **TARIFF PRODUCT TO PROVIDE REGENERATION. IS THIS**
14 **OFFERING, AND THE PRICING FOR THIS OFFERING, RELEVANT**
15 **TO THIS PROCEEDING?**

16 A. No. As I explained above, Qwest is obligated to offer regeneration for CLEC-to-
17 CLEC connections as a wholesale product under section 251(c)(6) of the Act.
18 CLEC-to-CLEC connections are just one of many products and services that are
19 available as wholesale products at TELRIC rates in addition to similar retail
20 product offerings at access rates. The FCC recently made clear that offering an
21 access product in no way relieved an ILEC from its obligation to provide
22 elements at wholesale under the Act. In doing so, they raised precisely the same
23 concerns that Covad has with Qwest's EICT offering:

24 Here, upon further consideration, we determine that in the local
25 exchange market, the availability of a tariffed alternative should
26 not foreclose unbundled access to a corresponding network
27 element, even where a carrier could, in theory, use that tariffed
28 offering to enter a market. . . . We hold, in contrast, that in the
29 local exchange market, a bar on UNE access wherever competitors
30 could operate using special access would be inconsistent with the
31 Act's text and its interpretation by various courts, would be

²⁴ Docket No. UT-043045, *In the Matter of the Petition for Arbitration of COVAD COMMUNICATIONS COMPANY with QWEST CORPORATION Pursuant to 47 U.S.C. Section 252(b) and the Triennial Review Order*, Order No. 06, ¶ 89 [citations omitted].

1 impracticable, and **would create a significant risk of abuse by**
2 **incumbent LECs.** It would be unreasonable to conclude that
3 Congress created a structure to incent entry into the local exchange
4 market, **only to have that structure undermined, and possibly**
5 **supplanted in its entirety, by services priced by, and largely**
6 **within the control of, incumbent LECs.** Finally, we find that a
7 competitor's current use of special access in the local exchange
8 market does not conclusively demonstrate non-impairment.
9

10 WC Docket No. 04-313; CC Docket No. 01-338, *In the Matter of Unbundled*
11 *Access to Network Elements; Review of the Section 251 Unbundling Obligations*
12 *of Incumbent Local Exchange Carriers*, Order on Remand, FCC 04-290 (rel. Feb.
13 4, 2005) ("TRO Remand Order"), ¶ 48.

14 **Q. MR. NORMAN ALSO TAKES ISSUE WITH YOUR TESTIMONY**
15 **REGARDING QWEST'S ASSIGNMENT OF COLLOCATION SPACE.**
16 **PLEASE COMMENT.**

17 A. Mr. Norman's point appears to be that Qwest complies with all FCC regulations
18 regarding the assignment of collocation space, and it therefore bears no
19 responsibility for the placement of individual CLEC collocations. This argument
20 ignores some critical facts.

21 First, Qwest has not always used its current collocation space assignment
22 policies. Many CLECs, including Covad, built their networks at a time when
23 Qwest employed other policies, including segregating CLEC collocations and
24 placing them on opposite ends of central offices, or on opposite floors. CLECs
25 who entered the market later were, in some instances, assigned space in entirely
26 different areas. In other words, the legacy of past collocation policies is still with
27 us.

28 Second, Qwest routinely reserves space in the central office for its own
29 use. While there is nothing wrong with this practice, and it is clearly authorized

1 by FCC rules, it does reduce the amount of quality collocation space available to
2 competitors, and it has shaped the placement of CLEC collocation space in many
3 central offices. In other words, Qwest's space assignment decisions have
4 unquestionably had an impact on the future need for regeneration of CLEC-to-
5 CLEC cross connections.

6 **Q. SPEAKING OF THIS FUTURE NEED, MR. NORMAN STATES THAT**
7 **REGENERATION WILL BE "RARE" IN THE FUTURE. PLEASE**
8 **RESPOND.**

9 A. Mr. Norman's analysis ignores some critical regulatory developments that are
10 taking place that I believe will dramatically increase the need for CLEC-to-CLEC
11 cross connections, and will therefore increase the likelihood that regeneration will
12 be needed. In the past, Covad had a limited need to cross connect with other
13 CLECs in Qwest central offices. The primary reason for these connections was
14 Qwest's refusal to provide interoffice transport at UNE rates on certain routes due
15 to capacity exhaust. In these situations, Covad sometimes provisioned a cross
16 connection to another carrier that could transport its traffic.²⁵

17 However, with the release of the FCC's *Triennial Review Order* and most
18 recent *TRO Remand Order*, the need for and frequency of CLEC-to-CLEC cross
19 connections will increase dramatically. The FCC has not only removed line
20 sharing from the national list of UNEs, but it has also removed unbundled
21 switching and many transport routes associated with larger central offices. As
22 voice CLECs begin to provide their own switching for voice customers, Covad

²⁵ In some circumstances, Covad purchased its own transport facilities, effectively building its own transport network. Depending on the amount of existing capacity on a certain route, however, ownership of redundant facilities is not always a good solution.

1 anticipates that the architecture by which it connects with such carriers to provide
2 a cooperative voice data product will change. Specifically, in each central office
3 where Covad provides this cooperative service, know as “loop splitting,” a new
4 cross connection will need to be provisioned between the voice CLEC and Covad.
5 In the past, if these customers were served with UNE-P, these connections were
6 not necessary.

7 As Qwest moves its UNE-P customers to its “commercial” Qwest
8 Platform Plus offering, it is likely that the competition between Covad and
9 Qwest’s DSL products will intensify. My understanding is that Qwest has more
10 aggressively packaged its platform plus product with its DSL product in an
11 attempt to make its voice product more attractive to CLECs. Voice CLECs will
12 need to choose between this product and a loop splitting arrangement with another
13 DSL provider, such as Covad. Any artificial pricing advantage or disadvantage,
14 such as prohibitively high costs to cross connect to Covad, will distort these
15 market choices.

16 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

17 A. Yes, it does.

Announcement Date:

Covad/112
Zulevic/1



December 9, 2004

Elizabeth Balvin
Covad Communications Company
7901 Lowry Blvd.
Denver, CO 80230
EBalvin@covad.com

TO:Elizabeth Balvin

Announcement Date:	December 9, 2004
First Effective Date:	December 30, 2004
Document Number:	NETW.12.09.04.B.000577.Copper_Retirements
Notification Category:	Network Notification
Target Audience:	CLEC's and ILECs
Subject/Product Name:	Copper Retirements in AZ, CO, ID, MN, MT, NE, NM, and OR

Please route this notice to those in your company who have responsibility for the maintenance and implementation of your telecommunications network.

The attached Network Disclosure Announcement reflects the availability in certain areas of Qwest Communications to deliver new or augmented services.

If you have any questions or would like to discuss this notice please contact your Qwest Sales Manager, Elena Donaghy on (559) 434-9754 or your Qwest Service Manager, Eric Yohe on (303) 382-2678. Qwest appreciates your business and we look forward to our continued relationship.

Sincerely,

Qwest

Note: In cases of conflict between the changes implemented through this notification and any CLEC interconnection agreement (whether based on the Qwest SGAT or not), the rates, terms and conditions of such interconnection agreement shall prevail as between Qwest and the CLEC party to such interconnection agreement.

The Qwest Wholesale Web Site provides a comprehensive catalog of detailed information on Qwest products and services including specific descriptions on doing business with Qwest. All information provided on the site describes current activities and process. Prior to any

Announcement Date:

Covad/112
Zulevic/2

modifications to existing activities or processes described on the web site, wholesale customers will receive written notification announcing the upcoming change.

If you would like to unsubscribe to mailouts please go to the ?Subscribe/Unsubscribe? web site and follow the unsubscribe instructions. The site is located at:

<http://www.qwest.com/wholesale/notices/cnla/maillist.html>

cc: Elena Donaghy
Eric Yohe

Qwest Communications 1600 7th Ave Room 1806 Seattle WA 98008

700 West Mineral
Littleton, CO. 80120



Network Disclosure Announcement No. 511

Public Notice of Network Change(s), Pursuant to CFR 47, subsections 51.325 - 51.335.
Qwest's Internet address: <http://www.qwest.com/disclosures>.

Copper Retirements in Arizona, Colorado, Idaho, Minnesota, Montana, Nebraska, New Mexico & Oregon

- First Implementation Date:** **December 30, 2004** (Due to maintenance issues – Pls See AZ Entry; Due to construction schedule – Pls see AZ Entry; Due to maintenance and service issues – Pls see MN Entry)
January 7, 2005 (Due to construction damage – Pls See AZ Entry)
January 10, 2005 (Due to maintenance and service issues – Pls See AZ Entry)
January 14, 2005 (Due to maintenance and service issues – Pls See NM Entry)
January 31, 2005 (Due to service issues – Pls See MT Entry)

Network Notices will be sent out to all affected CLECs associated with this specific copper retirement in addition to this Network Disclosure filing.

Other Implementation Dates: Range from March 13, 2005 – June 15, 2005

Original Date Posted: December 8, 2004

Summary: Copper Retirements are necessary to respond to various factors in the Outside Plant, including road construction, maintenance problems, and growth accommodation. Replacement cables may be either copper or fiber. Specific information will be provided with each disclosure.

Locations, Timing of Deployments & Interface Requirements:

The following gives additional details on the copper retirement(s):

1	STATE	ARIZONA
	WIRE CENTER	CRAYCROFT
	8-CHARACTER CLLI	TCSNAZCR
	COMPLETION DATE/PLANNED RETIREMENT DATE	13-Mar-05
	DA (s)	310571
	FDI Address(es)	5455 E COMANCHE
	Replacing	CABLE
2	STATE	ARIZONA
	WIRE CENTER	FLAGSTAFF
	8-CHARACTER CLLI	FLGSAZSO
	COMPLETION DATE/PLANNED RETIREMENT DATE	30-Dec-04
	DA (s)	210431
	FDI Address(es)	X 20 RL27
	Replacing	CABLE, DUE TO MAINTENANCE ISSUES

3	STATE	ARIZONA
	WIRE CENTER	HIGLEY
	8-CHARACTER CLLI	HGLYAZMA
	COMPLETION DATE/PLANNED RETIREMENT DATE	13-Mar-05
	DA (s)	410121
	FDI Address(es)	X 15620 S RECKER RD
	Replacing	PART OF DA 410121 WILL BE CUT TO DA 410617 TO BE SERVED FROM FIBER NODE/USAM X 3590 E PECOS RD. THE CURRENT ROUTE IS 2.8 MILES OF MIXED GAUGE.(ALL COPPER FROM CO). THE NEW ROUTE WILL BE LESS THAN 2400 FT 24 GAUGE FROM THE RT TO THE LONGEST LOOP. THIS CUT WILL COVER THE AREA NORTH OF PECOS RD TO SARAGOSA ST, 172 ST TO 173 WY.
4	STATE	ARIZONA
	WIRE CENTER	PHOENIX NE
	8-CHARACTER CLLI	PHNXAZNE
	COMPLETION DATE/PLANNED RETIREMENT DATE	13-Mar-05
	DA (s)	310561
	FDI Address(es)	4201 E FLOWER ST
	Replacing	DEFECTIVE LEAD CABLE
5	STATE	ARIZONA
	WIRE CENTER	PHOENIX SE
	8-CHARACTER CLLI	PHNXAZSE
	COMPLETION DATE/PLANNED RETIREMENT DATE	10-Jan-05
	DA (s)	115731
	FDI Address(es)	3292 S 36TH ST
	Replacing	CABLE, DUE TO MAINTENANCE & SERVICE ISSUES
6	STATE	ARIZONA
	WIRE CENTER	SUPER MAIN
	8-CHARACTER CLLI	SPRSAZMA
	COMPLETION DATE/PLANNED RETIREMENT DATE	15-Mar-05
	DA (s)	412421
	FDI Address(es)	8401 E EMELITA AV
	Replacing	Abandon cables on adot property to allow construction of the red mountain fwy (202) at southern ave and 88 th St. There will be no working circuits in the cables.
7	STATE	ARIZONA
	WIRE CENTER	TEMPE
	8-CHARACTER CLLI	TEMPAZMA
	COMPLETION DATE/PLANNED RETIREMENT DATE	30-Dec-04
	DA (s)	411331
	FDI Address(es)	2021 W RIO SALADO PKWY
	Replacing	CABLE, DUE TO CONSTRUCTION SCHEDULE
8	STATE	ARIZONA
	WIRE CENTER	YUMA
	8-CHARACTER CLLI	YUMA AZSE
	COMPLETION DATE/PLANNED RETIREMENT DATE	07-Jan-05
	DA (s)	420321
	FDI Address(es)	X 2100 W 32 ST
	Replacing	CABLE, DUE TO CONSTRUCTION DAMAGE
9	STATE	COLORADO
	WIRE CENTER	CANON CITY

	8-CHARACTER CLLI	CACYCOMA
	COMPLETION DATE/PLANNED RETIREMENT DATE	13-Mar-05
	DA (s)	211425
	FDI Address(es)	X 202 FIELD
	Replacing	CABLE, DUE TO MAINTENANCE ISSUES
10	STATE	COLORADO
	WIRE CENTER	CANON CITY
	8-CHARACTER CLLI	CACYCOMA
	COMPLETION DATE/PLANNED RETIREMENT DATE	20-Mar-05
	DA (s)	311681
	FDI Address(es)	X 1328 SHERMAN; X 1498 CHESTNUT
	Replacing	AERIAL CABLE - WATER DAMAGE
11	STATE	COLORADO
	WIRE CENTER	DENVER
	8-CHARACTER CLLI	DNVRCONO
	COMPLETION DATE/PLANNED RETIREMENT DATE	13-Mar-05
	DA (s)	410585
	FDI Address(es)	X 1551 PLATTE
	Replacing	THIS PROJECT WILL ALLOW CONSTRUCTION OF A NEW PEDESTRIAN BRIDGE ACROSS I-25 @ 16TH ST BEING PROVIDE BY THE CITY AND COUNTY OF DENVER. EXISTING BURIED CABLE IS CURRENTLY IN ROAD ROW AND NEEDS TO BE ABANDON IN PLACE. EXISTING SERVICE WILL BE REROUTED THROUGH DISTRIBUTION COUNT FROM SAI X 1551 PLATTE. THIS JOB WILL INCREASE THE LOOP LENGTH BY ~960FT OF 24 GAUGE COPPER.
12	STATE	COLORADO
	WIRE CENTER	FORT LUPTON
	8-CHARACTER CLLI	FTLPCOMA
	COMPLETION DATE/PLANNED RETIREMENT DATE	13-Mar-04
	DA (s)	410132
	FDI Address(es)	X 243 N MCKINLEY AV
	Replacing	REHAB JOB - 26GA AERIAL CABLES WITH 24 GA
13	STATE	IDAHO
	WIRE CENTER	BOISE
	8-CHARACTER CLLI	BOISIDMA
	COMPLETION DATE/PLANNED RETIREMENT DATE	31-Mar-05
	DA (s)	310602; 310701
	FDI Address(es)	X 2680 WARMSPRINGS AV; X 40 RL77
	Replacing	AP'S WITH X BOXES
14	STATE	IDAHO
	WIRE CENTER	BOISE
	8-CHARACTER CLLI	BOISIDNW
	COMPLETION DATE/PLANNED RETIREMENT DATE	30-Mar-05
	DA (s)	410501
	FDI Address(es)	X 8153 W STATE
	Replacing	CABLE, DUE TO MAINTENANCE ISSUES
15	STATE	IDAHO
	WIRE CENTER	BOISE
	8-CHARACTER CLLI	BOISIDSW
	COMPLETION DATE/PLANNED RETIREMENT DATE	30-Mar-05

	DA (s)	410201
	FDI Address(es)	X 6440 S FIVE MILE RD
	Replacing	CABLE. DUE TO MAINTENANCE ISSUES
16	STATE	IDAHO
	WIRE CENTER	BUHL
	8-CHARACTER CLLI	BUHLIDMA
	COMPLETION DATE/PLANNED RETIREMENT DATE	31-Mar-05
	DA (s)	210101
	FDI Address(es)	X 117 BROADWAY AV SO
	Replacing	AERIAL CABLE
17	STATE	IDAHO
	WIRE CENTER	CALDWELL
	8-CHARACTER CLLI	CLWLIDMA
	COMPLETION DATE/PLANNED RETIREMENT DATE	13-Mar-05
	DA (s)	210410; 310103
	FDI Address(es)	X 417 S 12 AV; X 1303 ARLINGTON AV
	Replacing	This work order will provide for replacement of 450 feet of wet, buried 26 gauge lead cable placed in 1939 in da#210410 of the caldwell, idaho exchange. This work order will place 800 feet of aerial 24 gauge cable from da#310103 and cut this leg of distribution cable from DA#210410 to Da#310103.
18	STATE	IDAHO
	WIRE CENTER	IDAHO FALLS
	8-CHARACTER CLLI	IDFLIDMA
	COMPLETION DATE/PLANNED RETIREMENT DATE	31-Mar-05
	DA (s)	410712
	FDI Address(es)	X 803 SATURN AV
	Replacing	AERIAL CABLE
19	STATE	IDAHO
	WIRE CENTER	KETCHUM
	8-CHARACTER CLLI	KTCHIDMA
	COMPLETION DATE/PLANNED RETIREMENT DATE	13-Mar-05
	DA (s)	221401
	FDI Address(es)	301 ST
	Replacing	DEFECTIVE CABLE
20	STATE	IDAHO
	WIRE CENTER	NAMPA
	8-CHARACTER CLLI	NMPAIDMA
	COMPLETION DATE/PLANNED RETIREMENT DATE	13-Mar-05
	DA (s)	210301
	FDI Address(es)	X 124 DAVIS AV
	Replacing	65' AERIAL LEAD CABLE
21	STATE	IDAHO
	WIRE CENTER	POCATELLO
	8-CHARACTER CLLI	PCTLIDMA
	COMPLETION DATE/PLANNED RETIREMENT DATE	31-Mar-05
	DA (s)	410115; 410125
	FDI Address(es)	X 636 W CUSTER; X 1005 N GARFIELD AV
	Replacing	AP'S WITH X BOXES
22	STATE	MINNESOTA
	WIRE CENTER	COON RAPIDS
	8-CHARACTER CLLI	CNROMNND

	COMPLETION DATE/PLANNED RETIREMENT DATE	13-Mar-05
	DA (s)	430277; 430300; 430304; 430306; 430307; 430702; 430704; 440500; 440502; 440504; 440505; 440506; 440588 420103; 420105; 420202; 420203; 420205; 420207; 430103; 430104; 430105; 430200; 430202; 430203; 430204; 450301
	FDI Address(es)	1940 103 AV NW; 1715 COON RAPIDS BLVD; 1811 COON RAPIDS BLVD; 1610 NW COON RAPIDS BLVD; 10500 NW ROBINSON DR; 1000 NW EGRET BLVD; 1100 EGRET; 2390 NORTHDAL BLVD; 1970 115 AVE NW; 11301 NW ROBINSON DR; 1830 111 AV NW; 11299 NW HANSON BLVD; 11025 NW OSAGE ST; 2041 NW COON RAPIDS BLVD; 10406 HANSON BLVD; 10480 HANSON BLVD; 11200 YUKON; 2759 S HEIGHTS DR; 9900 NW ZILLA ST; 10000 NW PALM ST; 1401 COON RAPIDS BLVD; 1004 94 AV NW; CNRP BLVD EXT-REDWOOD ST
	Replacing	CABLE RE-ROUTES DUE TO COUNTY ROAD JOB
23	STATE	MINNESOTA
	WIRE CENTER	EVELETH
	8-CHARACTER CLLI	EVLTMNEV
	COMPLETION DATE/PLANNED RETIREMENT DATE	15-Jun-05
	DA (s)	231001
	FDI Address(es)	X 0406
	Replacing	THIS JOB WILL REPLACE APROX. 9000' OF CABLE AND RELOCATE IT DUE TO ROAD RECONSTRUCTION ALONG
24	STATE	MINNESOTA
	WIRE CENTER	FERGUS FALLS
	8-CHARACTER CLLI	FRFLMNFB
	COMPLETION DATE/PLANNED RETIREMENT DATE	30-Dec-04
	DA (s)	490802
	FDI Address(es)	X 460/12
	Replacing	CABLE, DUE TO MAINTENANCE & SERVICE ISSUES
25	STATE	MINNESOTA
	WIRE CENTER	VIRGINA
	8-CHARACTER CLLI	VRGNMNV
	COMPLETION DATE/PLANNED RETIREMENT DATE	15-May-05
	DA (s)	122002
	FDI Address(es)	X 1906
	Replacing	this job is being issued to replace aprox. 2870' of BhBH-6 along pike river road, in virginia, minnesota.
26	STATE	MONTANA
	WIRE CENTER	GREAT FALLS
	8-CHARACTER CLLI	GRFLMTMA
	COMPLETION DATE/PLANNED RETIREMENT DATE	31-Jan-05
	DA (s)	212331
	FDI Address(es)	GORE HILL
	Replacing	REPLACE AERIAL CABLE WITH UNDERGROUND AT MT AIR GUARD NEW GATE. SHORT TERM DISCLOSURE REQUIRED DUE TO SERVICE ISSUES
27	STATE	NEBRASKA
	WIRE CENTER	GRAND ISLAND
	8-CHARACTER CLLI	GDISNENW
	COMPLETION DATE/PLANNED RETIREMENT DATE	13-Mar-05
	DA (s)	313403
	FDI Address(es)	X 2115 BELLWOOD

	Replacing	EXISTING FACILITY NEEDS TO BE abandoned. area was replatted. no working circuits in this facility at this time.
28	STATE	NEW MEXICO
	WIRE CENTER	ALBUQUERQUE NORTH
	8-CHARACTER CLLI	ALBQNMNO
	COMPLETION DATE/PLANNED RETIREMENT DATE	14-Jan-05
	DA (s)	311101
	FDI Address(es)	X 411 MATTHEW AV N W
	Replacing	CABLE, DUE TO MAINTENANCE & SERVICE ISSUES
29	STATE	OREGON
	WIRE CENTER	ASTORIA
	8-CHARACTER CLLI	ASTROR64
	COMPLETION DATE/PLANNED RETIREMENT DATE	13-Mar-05
	DA (s)	410261
	FDI Address(es)	55 14TH; 75 14TH
	Replacing	300' OF 19GA LEAD CABLE WITH 24GA CABLE
30	STATE	OREGON
	WIRE CENTER	HAROLD
	8-CHARACTER CLLI	PTLDOR08
	COMPLETION DATE/PLANNED RETIREMENT DATE	31-Mar-05
	DA (s)	210152
	FDI Address(es)	X 13511 SE HAROLD
	Replacing	An additional 100' of 24g copper will be added to loop on se knight at se 140 th and will change from aerial to underground cable.due to a road project. city or portland wants poles removed by 1-31-05.
31	STATE	OREGON
	WIRE CENTER	OREGON CITY
	8-CHARACTER CLLI	ORCYOR18
	COMPLETION DATE/PLANNED RETIREMENT DATE	30-Apr-05
	DA (s)	210761; 212411; 211882; 211883; 212015; 212666
	FDI Address(es)	X19131 Marjorie ln; x14865 s loder rd; x14645 s mapletane; x20254 s beavercreek rd
	Replacing	RELOCATE EXISTING AERIAL CABLE ALONG BEAVERCREEK RD BETWEEN MOLALLA AVE AND MARJORIE LN DUE TO CONFLICTS WITH STREET IMPROVEMENT PROJECT.
32	STATE	OREGON
	WIRE CENTER	PRINEVILLE
	8-CHARACTER CLLI	PRVLOR53
	COMPLETION DATE/PLANNED RETIREMENT DATE	13-Mar-05
	DA (s)	232501
	FDI Address(es)	X 9-16R31.121 JUNIPER CANYON RD; X 1 S BENCH RD
	Replacing	REROUTING CABLES FOR DEVELOPMENT

Additional Information:

Any customer premises equipment vendor/manufacturer or enhanced services provider desiring additional technical information in conjunction with this Disclosure can contact:

Shirley Tallman
700 W. Mineral Ave
Littleton, CO 80120
Shirley.Tallman@qwest.com

PSC120804.TXT

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

--o0o--

IN THE MATTER OF: THE)	
PETITION OF DIECA)	DOCKET #04-2277-02
COMMUNICATIONS, INC., D/B/A)	
COVAD COMMUNICATIONS COMPANY,)	
FOR ARBITRATION TO RESOLVE)	
ISSUES RELATING TO AN)	
INTERCONNECTION AGREEMENT WITH)	
QWEST CORPORATION)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SALT LAKE CITY, UTAH

DECEMBER 8, 2004

9:00 A.M.

VOLUME 1

BEFORE:

BEFORE ADMINISTRATIVE LAW JUDGE STEVE GOODWILL

--o0o--

1 A P P E A R A N C E S

2 FOR COVAD ANDREW R. NEWELL
COMMUNICATIONS, INC.: GORSUCH KIRGIS LLP
Page 1

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24 telling you it was these facilities and now it's
25 going to be this facility, that's letting you know

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1 that you can determine are any of my services going
2 to be impacted by that change in technical parameters
3 and standards in the replacement. So to some extent,
4 you know, you need to let us know or you need to
5 determine by looking at your own services that you
6 are providing to the customers because we might not
7 know what those are, whether or not there's going to
8 be an impact.

9 Q Okay. That's good information. But I want
10 to make sure that my question was answered which was
11 does Qwest always provide this statement whether they
12 believe it impacts the CLEC community or not?

13 A I do not believe that we provide this level
14 of detail and this kind of statement. As I indicated
15 this is one of our early on and as this copper
16 retirement notice has evolved to some extent through
17 these proceedings, were providing and being more
18 sensitive about the information that we are
19 providing. And to some extent we can let you know
20 there's going to be a change and what that change is
21 going to be, but we have a better understanding that
22 really a CLEC needs to look and make their own
23 determination of whether there's going to be a
24 negative impact to them or not because we may not
25 always know all of the services they are providing

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PSC120804.TXT

1 across the place. So we're trying to be more
2 specific and give you the information that lets you
3 make your own determination. But in this particular
4 early look, that's my understanding when they looked
5 at it, they did not think it would impact the CLEC
6 community.

7 Q Okay. So let's attack it another way.
8 Let's say Qwest makes its determination and
9 determines that it will impact the CLEC community.
10 Will Qwest always include a statement, sort of the
11 opposite statement of the one made here when they've
12 made that determination or was the point of what you
13 just said to say Qwest no longer tries to make that
14 determination, it just provides what it thinks is
15 enough network information for CLECs to judge that on
16 their own?

17 A Qwest wants to make sure that it provides
18 all of the information that it's required to provide
19 for the FCC rules. And in providing that information
20 and providing the information that lets a CLEC
21 determine whether or not they've got someone in that
22 location, and there are ways they can do that, they
23 need to look at the change and technical standards
24 and make their own judgement whether or not their
25 customer is impacted. And I think it's one thing for

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1 us to give, you know, probable impact and a probable
2 impact is we're going from fiber, you know, to copper

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

ARB 584

In the Matter of)
)
COVAD COMMUNICATIONS)
COMPANY)
)
Petition for Arbitration of an)
Interconnection Agreement with)
Qwest Corporation)

**RESPONSE TESTIMONY OF
ELIZABETH BALVIN**

ON ISSUE 8 (BILLING)

**FILED ON BEHALF OF
DIECA COMMUNICATIONS, INC.
D/B/A COVAD COMMUNICATIONS COMPANY**

March 23, 2005

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I. IDENTIFICATION OF WITNESS

Q. MS. BALVIN, PLEASE IDENTIFY YOURSELF FOR THE COMMISSION.

A. My name is Elizabeth (Liz) Balvin and I am employed by Covad Communications Company (“Covad”) as the Director of External Affairs for the Qwest region. My business address is 7901 Lowry Boulevard, Denver, Colorado 80230.

Q. ARE YOU THE SAME MS. BALVIN WHO PREVIOUSLY FILED DIRECT TESTIMONY IN THIS ARBITRATION CASE?

A. Yes, I am.

II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to respond to the testimony of Qwest witness William Easton on Issue 8.

III. ARBITRATION ISSUES

ISSUE 8: TIME FRAME FOR PAYMENT OF BILLS, DISCONTINUANCE OF ORDERING, AND DISCONNECTION OF SERVICE

Q. IS THERE A REASON WHY COVAD HAS NOT DISPUTED THE TERMS OF ITS INTERCONNECTION AGREEMENTS WITH RESPECT TO BILLING TIMEFRAMES IN THE STATES OF IOWA, NEBRASKA, NORTH DAKOTA, SOUTH DAKOTA, WYOMING, MONTANA AND IDAHO AS IDENTIFIED BY MR. EASTON?

A. Yes. Covad has chosen at this time not to arbitrate the billing terms in these states because our current presence is limited. Covad’s recommended language for the state of Oregon supports longer intervals given our volumes and practical experience with Qwest’s bills.

1 **Q. HOW CONCERNED IS COVAD ABOUT THE TERMS GOVERNING**
2 **PAYMENT FOR SERVICES RENDERED TO QWEST?**

3 A. As discussed at length in my Direct Testimony, Covad has a significant interest in
4 the terms governing payment for services rendered by Qwest. While Covad has
5 every intent to pay for services rendered, the timeframes imposed must take into
6 consideration Qwest billing deficiencies, minimize the impact to end users seeking
7 Covad services (changes to existing end users accounts and/or new installation
8 orders), and reduce premature disconnects in error for Covad end user customers.

9 As identified previously but worth repeating here:

10 1. Covad seeks 15 additional days to the “payment due date” but *only*
11 when the following conditions exist: an invoice contains (1) line splitting or loop
12 splitting products, (2) a missing circuit ID, (3) a missing USOC, or (4) new rate
13 elements, new services, or new features not previously ordered by Covad.
14 Specific to item number four (4), while 15 additional days would be required,
15 Covad has proposed language to accommodate a date certain when Covad’s
16 review procedures must be reduced to the 30 day interval – i.e. after 12 months
17 experience. A date certain timeframe calls for Covad to establish efficient billing
18 review procedures that are not easily known upon implementation of “new
19 products”. The language in part states “After twelve (12) months’ experience,
20 such New Products shall be subject to the thirty (30) Day time frame hereinafter
21 discussed.”

22 2. Covad seeks only 30 additional days before “discontinuance of order
23 processing” can be imposed by Qwest because end users seeking Covad’s
24 services should not be unduly impacted.

1 3. Covad seeks only 30 additional days before Qwest can begin
2 “disconnection of services” because again, Covad end user’s are not at fault and
3 should not be impacted prematurely.

4 **Q. DID COVAD ALWAYS REQUEST THE ABOVE INTERVALS?**

5 A. No, initially Covad proposed longer intervals as identified below but for purposes
6 of this arbitration, Covad proposes the “revised” billing time frames:

	Payment Due Date	Discontinuance of Order Processing	Disconnection of Services
Qwest	30	30	60
Covad Originally Proposed	45	90	120
Covad Revised Proposal	30 (except some 45)	60	90

7
8 **Q. MR. EASTON CITES TO LANGUAGE (SECTION 5.4.4) THAT**
9 **SUPPORTS NOT PAYING BILLED AMOUNTS WHEN THERE IS A**
10 **DISPUTE “OVER A CHARGE ON A BILL”, IS COVAD COMFORTABLE**
11 **WITH QWEST’S ABILITY TO TRACK DISPUTED INVOICES?**

12 A. Covad is confident that Qwest is able to track to disputed invoices such that
13 payment due dates would be waived until the dispute is resolved (regardless of
14 favored party). Of concern would be Qwest’s acceptance of disputes issued by
15 Covad (or any other CLEC) such that the provisions surrounding payment due
16 dates, discontinuance of service and/or disconnection of service be invoked *only*
17 when appropriate. The reason being, Qwest dispute process calls for manual
18 issuance by CLECs and manual acceptance by Qwest, see Product Catalog titled

1 “Billing Information – Dispute Process”¹ due to be implemented April 4, 2005.
2 Manual intervention undoubtedly will introduce new human error factors, whereby
3 disputes may inappropriately be delayed. Covad is also concerned that Qwest may
4 see a large billing dispute as an opportunity to leverage Covad, or even put it out
5 of business. It could do so by refusing to acknowledge a billing dispute. Under
6 Qwest’s proposed timeframes, there would be little, if any, time to seek relief from
7 state commissions to prevent customers from being disconnected. It is these
8 scenarios whereby Covad language would provide safeguards such that end users
9 would not be unduly impacted.

10 **Q. MR. EASTON HAS CLAIMED THAT COVAD’S PROPOSED LANGUAGE**
11 **WOULD HAVE AN IMPACT ON QWEST’S CASH FLOW IF**
12 **IMPLEMENTED, HOW DO YOU RESPOND?**

13 A. To be clear, Covad will pay invoices within 30 days, unless the billable amount
14 falls into one of the 4 categories (see above); These exceptions to Qwest’s
15 proposed 30 day payment interval are reasonable because 1) shared loop products
16 call for coordination of voice plus data provided bills; 2) missing circuit ID and/or
17 USOC information cause manually intensive review of the records to validate for
18 accuracy; and 3) new rate elements, services, or features again cause Qwest to
19 implement new business rules that must be sufficiently validated for accuracy.
20 Qwest not only defines its shared loop products but generates the billing associated
21 with shared loop provisioned services, thus their ability to track to Covad’s
22 recommended language should not be at issue here.

¹ See URL: <http://www.qwest.com/wholesale/cmp/reviewarchivefeb05.html>

1 **Q. MR. EASTON ASSERTS QWEST TIME FRAMES ARE**
2 **“COMMERCIALLY REASONABLE,” CAN YOU COMMENT?**

3 A. Yes. I would begin by questioning how Qwest defines “commercially
4 reasonable”. In my mind, what may work for some companies may not meet the
5 needs of Covad, thus commercial reasonableness must take into consideration not
6 only the business needs of the parties in question but nuances that may take time to
7 resolve, as Covad’s language attempts to do.

8 Ironically, in *competitive* businesses, the reasonableness of a customer’s
9 request is generally assumed, hence the time-worn term “the customer is always
10 right.” And Covad is no small customer for Qwest. Covad pays Qwest just under
11 one million dollars per month. There is little doubt that Qwest would
12 accommodate Covad if Covad could move its business to a competitor. Thus, it is
13 not whether Covad’s request is reasonable or unreasonable that is truly at issue; it
14 is simply a matter of Qwest trying to leverage its monopoly power in the
15 wholesale market to dictate terms to customers – even large customers.

16 **Q. QWEST ALSO ASSERTS THAT THE LANGUAGE SURROUNDING**
17 **BILLING TIME FRAMES WERE “ADDRESSED DURING THE 271**
18 **WORKSHOPS.” HOW DO YOU RESPOND?**

19 A. While Qwest believes these issues were sufficiently ironed out during the 271
20 workshops, billing experience with respect to *wholesale* providers was not yet
21 well-developed, and neither were Qwest’s billing systems. Covad now challenges
22 the language because of the issues it identified through practical experience.

1 **Q. WHAT DO YOU HAVE TO SAY TO THE POINT QWEST MAKES WITH**
2 **RESPECT TO “AT&T/TCG RECENTLY COMPLETED**
3 **INTERCONNECTION NEGOTIATIONS WITH BOTH PARTIES**
4 **AGREEING TO THE PAYMENT LANGUAGE THAT COVAD**
5 **CHALLENGES HERE”?**

6 A. Covad was not privy to the negotiations that took place between Qwest and
7 AT&T/TCG, thus I don't feel it is appropriate to form an opinion here. I will
8 simply state that AT&T's limited entry into the local market, which has now been
9 terminated, calls into question whether the agreement between Qwest and AT&T
10 on this particular issue is at all germane.

11 **Q. MR. EASTON ALSO CALLS INTO QUESTION COVAD'S END USER**
12 **PAYMENT TIMEFRAMES. PLEASE STATE WHY COVAD'S POLICIES**
13 **ARE IRRELEVANT.**

14 A. Mr. Easton has attached to his testimony as Exhibit Qwest/2, Easton/1 a tutorial
15 posted on Covad's website to help our end users understand the information
16 provided for on our bills. Based on the tutorial, Qwest states that “Covad uses the
17 same 30 day period”. The tutorial aside, Covad end user *paper* bills are only two
18 pages long, with just a few line items that clearly state the product and product
19 type for which the customer is being billed. Here we are talking about billing
20 between companies (paper and electronic), in extremely large volumes, and such
21 bills must be verifiable by electronic, not manual means. Covad's simple invoices
22 to its customers are not relevant to the issue at hand.

1 **Q. MR. EASTON ALSO CLAIMS THAT COVAD CAN DISPUTE THE BILL**
2 **APPARENTLY AT ANY TIME SUBSEQUENT TO THE PAYMENT DUE**
3 **DATE. IS THAT ACCURATE?**

4 A. Based on the language of the proposed IA, it appears to Covad that the only type
5 of billing disputes that it can permissibly raise beyond the fifteen days provided for
6 in Section 5.4.4 may be limited to billing disputes relating to inaccuracies in rates
7 billed. The last sentence of Section 5.4.4 reads, “Nothing in this Section shall be
8 construed to restrict the Parties’ right to recover amounts paid in excess of lawful
9 charges, which shall be subject to the time limits set forth in Section 5.18.5.”
10 Consequently, for a number of deficiencies/errors that lead to Covad bill disputes,
11 these types of claims may be barred.

12 Equally important, the procedural safeguards that surround the billing
13 dispute section appear to apply only to the disputes raised within fifteen days of
14 the payment due date. Without these safeguards or mechanisms, which are
15 designed to drive resolution, the ability to simply say “we dispute a bill”
16 accomplishes nothing. And use of other mechanisms, like the audit right
17 contained in the interconnection agreement or just blindly disputing billings in
18 order to buy time to review a bill, are relatively costly and time consuming for
19 both parties. By far the most effective way to ensure that Covad pays what it owes
20 and raises only legitimate billing disputes is to accord Covad more time to review
21 its bills.

22 **Q. MR. EASTON SUGGESTS THAT ELECTRONIC BILLING SHOULD**
23 **RESULT IN MORE EFFICIENT MEANS TO ANALYZE QWEST BILLS.**
24 **IS THAT CHARACTERIZATION ACCURATE?**

1 A. Yes, if the information is complete on the bills provided. When critical
2 information is missing and/or inaccurate, though, errors are automatically
3 generated that require Covad to employ manually intensive review procedures.
4 For example, Covad is forced to employ manually intensive review procedures
5 when Qwest fails to provide circuit identification numbers, universal service
6 ordering codes (USOCs), inaccurately applies an expected rate, or applies a rate
7 that is subject to multiple zones.

8 **Q. CAN COVAD GET BILL DEFICIENCIES CORRECTED VIA THE**
9 **“SERVICE DELIVERY COORDINATORS” AS MR. EASTON**
10 **SUGGESTS?**

11 A. No, we cannot. While the Qwest billing contacts may provide information or
12 explanations about why bills are formatted or fail to contain information, any
13 actual systems and/or process changes necessary to accurately reflect billing must
14 go through Qwest’s Change Management Process (“CMP”).

15 **Q. MR. EASTON ASSERTS THAT, GIVEN CLECS ABILITY TO OPT INTO**
16 **COVAD’S INTERCONNECTION AGREEMENT IN ITS ENTIRETY,**
17 **QWEST IS AT RISK FOR EXTENDED PAYMENT DUE DATE TIME**
18 **FRAMES. HOW DO YOU RESPOND?**

19 A. As previously stated, the language proposed by Covad should provide the proper
20 incentive for Qwest to address legitimate billing deficiencies. In turn, Covad’s
21 language requires payment due dates for “new products” be reduced to 30 days
22 after a 12 month period, thereby creating an incentive for CLECs to implement
23 efficient analysis procedures within a date certain timeframe.

1 **Q. WHAT ABOUT MR. EASTON'S ASSERTION THAT PERFORMANCE**
2 **MEASUREMENTS IN PLACE TODAY PROVIDES THE PROPER**
3 **INCENTIVE FOR QWEST TO ADMINISTER COMPLETE AND**
4 **ACCURATE BILLS?**

5 A. BI-3, titled "Billing Accuracy – Adjustments for Errors" specifically evaluates the
6 accuracy with which Qwest bills CLECs, *focusing on the percentage of billed*
7 *revenue adjusted due to errors.* Covad's recommended payment due dates
8 (30/except some 45) provides the opportunity to validate Qwest bills only under
9 certain circumstances that require more time for review. That said, the
10 performance measure BI-3 would only provide the proper incentive if Covad's
11 analysis resulted in disputed charges, which may not be the case (particularly
12 given the way the IA is drafted and the limitations that appear to be in place on the
13 types of billing claims that may be raised). The increased interval simply provides
14 the means to accurately review prior to rendering payment and/or disputing billing
15 records. The Covad language, on the other hand, should result in Qwest
16 addressing legitimate billing problems such that *CLECs would not be afforded the*
17 *45 day interval without good cause.*

18 BI-4, titled "Billing Completeness" matches non-recurring and recurring
19 charges reflected on a completed service orders and minutes of use associated with
20 CLEC local traffic over Qwest's network that are applied to the correct bills. This
21 PID does not take into consideration the legitimate billing deficiencies identified
22 by Covad. For example, there was a time when Qwest did not always provide the
23 USOC but a USOC description was provided instead. In this instance, the results
24 would not be impaired because the PID only calls for the reflection of the charges

1 on the bill and in the end; no incentive is created for Qwest to address missing
2 USOCs. In addition, Qwest does not track to the circuit identification number thus
3 it cannot be accounted for in this PID. To reiterate, Covad's language will only
4 provide 15 additional days if the resulting billable records fall into one of the
5 identified exceptions (1 – 4).

6 **Q. PLEASE STATE WHY QWEST'S POSITION ON DISCONTINUANCE OF**
7 **ORDERING PROCESSING IS UNREASONABLE.**

8 A. Covad does not dispute Qwest's right to discontinue processing orders, but
9 only the time at which such discontinuance can occur. The crux of the issue
10 surrounds Qwest's ability to stop order processing, that is, changes to existing
11 Covad customers and/or end user's seeking Covad's services. In addition it is
12 critical to understand that these provisions give to Qwest the power to destroy, if it
13 so chooses, Covad's business in the state of Oregon. The end users seeking
14 Covad's services should not be unduly impacted by billing reconciliation between
15 Qwest and Covad. Covad's addition of *only* 30 days is to minimize impacts to
16 existing and/or end user's seeking its services. While Qwest has every right to be
17 concerned about receiving payment to which it is legitimately entitled, that
18 concern pales in comparison to Covad's concern about protecting the viability of
19 its business in the event of a billing dispute. Worth noting again, Qwest must
20 accept and account for disputed amounts prior to discontinuing order processing
21 which is performed electronically, thus the impacts are greater to Covad if Qwest
22 pulls the plug sooner than required.

23 It is important to keep in mind that the interconnection agreement must
24 provide for safeguards that will allow Covad to work around situations that may

1 benefit Qwest at Covad's expense. These safeguards are becoming ever more
2 important as Qwest apparently is now attempting to modify its PAP obligations,
3 and eliminate the industry forum dedicated to improvements in the performance
4 measures (PIDs). Covad's proposed billing time frames provide that safeguard,
5 and should be approved by the Commission.

6 **Q. DOES THE SAME REASONING APPLY TO COVAD'S REQUEST FOR**
7 **AN EXTENSION OF THE TIME FRAMES FOR THE DISCONNECTION**
8 **OF SERVICES AS FOR DISCONTINUANCE OF ORDER PROCESSING?**

9 A. Yes, it does, and to clarify again, Covad seeks *only* 30 additional days before
10 Qwest can disconnect end users whom have *not* chosen to leave Covad.

11 **Q. PLEASE SUMMARIZE WHY COVAD'S PROPOSED PAYMENT, ORDER**
12 **DISCONTINUANCE, AND SERVICE DISCONNECTION PROVISIONS**
13 **ARE REASONABLE AND SHOULD BE ADOPTED.**

14 A. Certainly. What is reasonable (and therefore should be included in the
15 interconnection agreement) cannot be determined in the abstract. To the contrary,
16 reasonableness must be evaluated against the task that Covad faces, and the
17 severity of the consequences resulting from late payment, discontinuance of order
18 processing, and disconnection of services. Covad's proposed billing time frames
19 should be adopted because without them, Qwest is afforded no incentive to address
20 the billing deficiencies highlighted by Covad, can rapidly halt new orders sought
21 by end-users seeking Covad services, and possibly disconnections processed in
22 error, again unduly impacting a Covad end user.

1 **Q. HAS ANY OTHER STATE COMMISSION RULED IN FAVOR OF**
2 **COVAD'S PROPOSED LANGUAGE SURROUNDING BILLING**
3 **TIMEFRAMES?**

4 A. Yes. The Minnesota Commission in summary ordered:

5 *Issue 9:* Regarding the length of time a billing party must wait before imposing
6 late-payment fees, withholding the processing of orders, or withholding service –

- 7 • a billing party shall wait at least 45 days after a bill is rendered before
8 imposing a late-payment fee for an item missing a circuit identification
9 number, or 30 days after a bill is rendered for any other item,
- 10 • a billing party shall wait at least 60 days after reaching a billing dispute
11 before the party may cease processing orders for the non-paying party, and
- 12 • a billing party shall wait at least 90 days after the date payment is due
13 before disconnecting service to a non-paying party's retail customers.

14
15 This Order became effective immediately. (Order attached as Exhibit Covad/205).

16 In previous arbitrations Covad has stated that it would be willing *to adopt*
17 *Qwest's proposed payment due date (i.e. 30 days)*, for all bills, if Qwest would
18 simply provide circuit identification information on all of its shared loop product
19 bills (not just Loop Splitting). As highlighted in my Direct Testimony, Qwest is
20 out of the Industry norm with respect to its lack of circuit identification numbers
21 on line shared and line splitting bills. Again, Qwest already generates this
22 information and its billing system(s) and billing output files provide the means to
23 pass this information (fields available for population).

24 In Qwest's binding response to Covad's Escalation (see Exhibit
25 Covad/202) requesting circuit id information on shared loop bills, Qwest cites
26 "economic infeasibility" because they pursued generating and passing of a new
27 field identifier (FID) which was not what Covad requested.

1 With respect to the discontinuance of order processing and disconnection
2 of services timeframes, the Minnesota Commission recognized the importance of
3 assuring end user's impacts are minimized, thus the adoption of Covad's proposed
4 timeframes.

5 **Q. DOESN'T QWEST HAVE THE MEANS TO RECOVER COSTS**
6 **ASSOCIATED WITH OPERATIONAL SUPPORT SYSTEM (OSS)**
7 **ENHANCEMENTS?**

8 A. Absolutely. Per the Oregon SGAT, Section 9.4.4, Qwest assesses a recurring
9 monthly fee of \$3.48, per provisioned line. That said, it is certainly fair to say that
10 Qwest is recovering its costs associated with implementing required OSS changes.
11 While Change Management Process (CMP) is the means for CLECs to initiate
12 recommended changes to product/process and/or systems, it is not the only means
13 to *originate* (i.e., a regulatory mandate). Thus, it is within the Oregon Public
14 Utility Commission's authority to mandate Qwest provide the Industry Standard
15 billing information requested by Covad (i.e. the circuit identification number).
16 While Covad has requested a longer payment interval rather than seeking this
17 remedy, a regulatory mandate to include the circuit identification number would be
18 just as effective, if not more effective, in resolving the issue.

19 **Q. DOES THIS CONCLUDE YOUR RESPONSE TESTIMONY?**

20 A. This concludes my Response Testimony; however, I anticipate filing any
21 additional testimony permitted by the Commission.

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer
Ken Nickolai
Marshall Johnson
Phyllis Reha
Thomas Pugh

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of Covad
Communications Company for Arbitration of
an Interconnection Agreement with Qwest
Corporation Pursuant to 47 U.S.C. § 252(b)

ISSUE DATE: March 14, 2005

DOCKET NO. P-5692, 421/IC-04-549

ORDER RESOLVING ARBITRATION
ISSUES AND REQUIRING FILED
INTERCONNECTION AGREEMENT

PROCEDURAL HISTORY

Since 1999, DIECA Communications, Inc. d/b/a Covad Communications Company (Covad) has operated in Minnesota pursuant to an interconnection agreement (ICA) with US WEST Communications, Inc. (US WEST), and its successor Qwest Corporation (Qwest).¹ That agreement has expired, but Covad and Qwest agreed to continue to honor its terms as they worked to revise it.

On April 6, 2004, after the parties failed to reach agreement on twelve issues, Covad petitioned the Commission to arbitrate these matters.

On April 12, 2004, Qwest petitioned to dismiss portions of Covad's petition.

On April 20, 2004, the Minnesota Department of Commerce (the Department), Covad and Qwest filed comments.

On April 28, 2004, the Commission issued its ORDER DENYING MOTION TO DISMISS WITHOUT PREJUDICE AND ASSIGNING ARBITRATOR, which referred all issues for arbitration before Administrative Law Judge (ALJ) Kathleen D. Sheehy of the Office of Administrative Hearings. The Department intervened in the case.²

On September 20-22, 2004, the ALJ conducted arbitration hearings in St. Paul, Minnesota.

On October 15, 2004, the parties filed an Updated Joint Disputed Issues List. This document contains, among other things, Covad's proposed list of information that Qwest must provide to competitors when it retires copper facilities in favor of fiber-optic ones.

¹ *In the Matter of the Petition of Covad Communications Company for Arbitration of an Interconnection Agreement with US WEST Communications, Inc., Pursuant to 47 U.S.C. § 252(b)*, Docket No. P-5692, 421/M-99-196.

² The Department's petition to intervene is granted as a matter of right. Minn. Stat. § 216A.07, subd. 3; Minn. Rules part 7812.1700, subp. 10.

On December 16, 2004, the ALJ filed her Arbitrator's Report making recommendations for addressing five substantive issues, the remainder having been resolved by the parties.

On January 10, 2005, the Commission received exceptions to the Arbitrator's Report from Covad, the Department and Qwest.

The Commission met on January 27, 2004, to consider this matter. The record of this case closed on that date.

FINDINGS AND CONCLUSIONS

I. BACKGROUND

A. Procedure

The federal Telecommunications Act of 1996 (1996 Act)³ was designed to open telecommunications markets to competition, including the local exchange market. (Conference Report accompanying S. 652). The 1996 Act opens markets by requiring each incumbent local exchange carrier (ILEC) to –

- permit competitive local exchange carriers (CLECs) to purchase its services at wholesale prices and resell them to retail customers (“end use customers”);
- permit CLECs to interconnect with its network on just, reasonable and nondiscriminatory terms; and
- offer unbundled network elements (UNEs) – that is, offer to rent elements of its network to CLECs without requiring the CLEC to also rent unwanted elements – on just, reasonable, and nondiscriminatory terms.⁴

A CLEC desiring to provide local exchange service can seek agreements with an ILEC related to interconnection with the ILEC's network, the purchase of finished services for resale, and the purchase of the ILEC's UNEs.⁵ If the ILEC and the CLEC cannot reach agreement, either party may ask the State commission to arbitrate unresolved issues and to order terms consistent with the 1996 Act.⁶ In particular, parties may ask a state Commission to determine the total element long-

³ Pub.L.No. 104-104, 110 Stat. 56, codified in various sections of Title 47, United States Code.

⁴ 47 U.S.C. § 251(c).

⁵ 47 U.S.C. §§ 251(c), 252(a).

⁶ 47 U.S.C. § 252(b).

run incremental cost (TELRIC) of UNEs, interconnection, and methods of obtaining access to UNEs.⁷ This Commission has resolved many interconnection disputes through arbitration.⁸

B. Decision Standard

In resolving the issues in this arbitration and imposing conditions, the Commission must (1) ensure that the resolution meets the requirements of § 251 of the 1996 Act, including any legally enforceable regulations prescribed by the Federal Communications Commission (FCC) pursuant to § 251; (2) establish any rates for interconnection, services or network elements according to § 252(d) of the 1996 Act; and (3) provide a schedule for implementation by the parties.⁹

The Commission may also establish and enforce other requirements of state law when addressing issues related to intercompany agreements under § 252.¹⁰ The Minnesota Legislature directs the Commission to encourage, among other things, economically efficient deployment of infrastructure for higher speed telecommunication services, fair and reasonable competition for local exchange telephone service, improved service quality, and customer choice.¹¹ In addition, the Commission must adopt policies “using any existing federal standards as minimum standards and incorporating any additional standards or requirements necessary to ensure the provision of high-quality telephone services throughout the state.”¹² These policies must facilitate the kind of interconnection that “the commission considers necessary to promote fair and reasonable

⁷ 47 C.F.R. §§ 51.501, 51.505.

⁸ See, for example, *In the Matter of the Consolidated Petitions of AT&T Communications of the Midwest, Inc., MCI Metro Access Transmission Services, Inc., and MFS Communications Company for Arbitration with U S WEST Communications, Inc., Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996*, Docket No. P-442, 421/M-96-855; P-5321, 421/M-96-909; P-3167, 421/M-96-729 (*Consolidated Arbitration*); *In the Matter of a Generic Investigation of US West Communications, Inc.’s Cost of Providing Interconnection and Unbundled Network Elements*, Docket No. P-442, 5321, 3167, 466, 421/CI-96-1540 (*Generic Cost Case*); *In the Matter of the Commission Review and Investigation of Qwest’s Unbundled Network Elements Prices*, Docket No. P-421/CI-01-1375; *In the Matter of the Commission’s Review and Investigation of Certain Unbundled Network Element Prices of Qwest*, Docket No. P-442, 421, 3012/M-01-1916; *In the Matter of the Petition of AT&T Communications of the Midwest, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b)*, Docket No. P-442, 421/IC-03-759.

⁹ 47 U.S.C. § 252(c).

¹⁰ 47 U.S.C. §§ 251(d)(3), 252(e)(3), 253(b), 261 and 601(c)(1); *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, 11 FCC Rcd 13042 (1996) (*Local Competition First Report and Order*) at ¶¶ 233, 244.

¹¹ Minn. Stat. § 237.011.

¹² Minn. Stat. § 237.16, subd. 8(a).

competition”¹³ and, in particular, must “prescribe appropriate regulatory standards for new local telephone service providers that facilitate and support the development of competitive services....”¹⁴

To these ends, the Legislature authorizes the Commission to remedy unreasonable or insufficient services or omissions¹⁵ by making any just and reasonable order necessary, up to and including revoking a carrier’s authority to provide service.¹⁶

In short, the Commission must impose terms and conditions in this proceeding that are just, reasonable, nondiscriminatory and fair to both the new entrants and the incumbent, consistent with the requirements of federal and state law.

II. FUTURE PROCEEDINGS

The 1996 Act requires parties to submit “any interconnection agreement adopted by negotiation or arbitration . . . for approval to the State commission.”¹⁷ The State commission must then approve or reject the agreement within 90 days as to a negotiated agreement and 30 days as to an arbitrated contract.¹⁸

The 1996 Act does not establish any deadline by which parties must submit a final ICA. It leaves this to State commissions, directing them to provide in their arbitration decisions a schedule for implementation.¹⁹

The Commission will require the parties in this arbitration to submit their final ICAs, containing all arbitrated and negotiated terms, within 30 days of this Order. The parties shall put their entire ICAs together and craft any additional language that the Commission has not specifically ordered in this arbitration.

The approval proceeding will enable the Commission to (1) review, for the first time, provisions arrived at through negotiations; (2) make any necessary adjustments to the arbitrated terms; and (3) ensure that the final ICA language comports with the Commission’s decisions in this arbitration. The Commission will review the entire agreement for compliance with the relevant law and consistency with the public interest as required by the 1996 Act.²⁰

SPECIFIC FINDINGS AND CONCLUSIONS

¹³ *Id.* at subd. 8(a)(2).

¹⁴ *Id.* at subd. 8(a)(6).

¹⁵ Minn. Stat. § 237.081.

¹⁶ Minn. Stat. § 237.16, subd. 5.

¹⁷ 47 U.S.C. § 252(e)(1).

¹⁸ 47 U.S.C. § 252(e)(4).

¹⁹ 47 U.S.C. § 252(c).

²⁰ See 47 U.S.C. § 252(e).

Covad and Qwest initially identified 12 unresolved issues for arbitration. Further negotiations reduced this list to the following:

- Issue No. 1.A: If Qwest retires a copper facility serving Covad's retail customers, must Qwest offer an alternative service that does not degrade service or increase Covad's costs?
- Issue No. 1.B: If Qwest retires a copper facility serving Covad's retail customers, what information must Qwest provide to Covad?
- Issue No. 2: How should the ICA address the obligations that Qwest agreed to undertake as part of securing FCC approval to enter the long-distance telecommunications market pursuant to § 271?
- Issue No. 3: If Covad asks Qwest to "commingle" § 251 and § 271 elements, must Qwest comply?
- Issue No. 5: If a) Qwest's central office has space to permit CLECs to collocate their equipment sufficiently close together to communicate without the need of regenerating their signals to each other, b) Qwest denies the CLECs the opportunity to locate their equipment in such proximity, causing them to collocate their equipment further apart, and c) the CLECs ask Qwest to regenerate their signals to each other, then may Qwest charge the CLECs for the regeneration service?
- Issue No. 9: How soon after rendering a bill may Qwest begin imposing late-payment fees? How long must Qwest wait after payment is due before Qwest may stop processing Covad's orders? How long must Qwest wait after payment is due before Qwest may disconnect service to Covad?

The Commission will consider these arbitrated issues below.

I. ARBITRATOR'S REPORT

Having reviewed the full record of this proceeding and provided an opportunity for all parties to be heard, the Commission generally finds the recommendations of the Arbitrator's Report to be a thorough and reasonable analysis of the issues. Except as otherwise specified below, the Commission concurs in the ALJ's analysis, findings and recommendations, and will accept, adopt and incorporate them into this agreement. In particular, the Commission adopts the ALJ's recommendations regarding Issue No. 2 (excluding both Covad's and Qwest's language pertaining to § 271 elements),²¹ No. 3 (requiring Qwest to comply with requests to commingle § 251 and § 271 elements) and No. 5 (permitting Qwest to charge a fee for providing regeneration service).

II. ISSUES

²¹ While concurring in the ALJ's recommendations, the Commission clarifies that it has not surrendered any of its jurisdiction to determine which topics are properly the subject of interconnection agreements, or to review those agreements. In particular, the Commission refrains from adopting the ALJ's conclusions regarding the definition of ICAs, the relationship between ICAs and "commercial agreements," or filing obligations, which are the subject of other dockets pending before the Commission.

Issue 1.A: If Qwest retires a copper facility serving Covad's retail customers, must Qwest offer an alternative service that does not degrade service or increase Covad's costs? (ICA Section 9.1.15)

A. The Issue

Traditionally telephone lines were used to transmit a single voice signal over each circuit, but the lines have the capacity to transmit multiple signals simultaneously. Using digital subscriber line (DSL) technology, a subscriber may use the capacity of a standard copper phone line to send and receive packets of data (enabling the subscriber to use the internet, for example) over some capacity while leaving other capacity free for traditional voice service. Qwest offers DSL service to its retail customers. Covad, by leasing the use of capacity on Qwest's lines,²² is able to compete with Qwest in delivering high-capacity DSL service to retail customers.

To achieve even greater transmission capacity, a telephone company may install fiber-optic cables.²³ To encourage the deployment of these lines, the FCC has refrained from requiring incumbent telephone companies to permit competitors to lease the use of a company's fiber-optic cables.²⁴

In the course of modernizing its system, Qwest may install fiber-optic cables to carry signals that used to be carried by copper lines. If Qwest were to use fiber-optic cables at some point in a line over which Covad provides DSL service, Covad's service would be impeded. Consequently, whenever Qwest replaces all or a part of a copper line with fiber optics, Covad proposes that Qwest be compelled to offer an alternative service that does not degrade Covad's DSL service or increase Covad's costs. Qwest opposes this proposal.

B. The ALJ's Recommendation

²² ILECs must permit CLECs to lease the use of a customer's line. The FCC used to require ILECs to give the CLECs the additional option of leasing only enough capacity to provide DSL service. *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147, 96-98, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*) at 20931-38, ¶¶ 38-53 (1999). The FCC is now phasing out this policy, although CLECs may continue the practice regarding their existing customers. CLECs retain the discretion to lease the entire line's capacity. *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capacity*, Report and Order and Order on Remand and a Further Notice of Proposed Rulemaking in CC Docket Nos. 01-338, 96-98 and 98-147 (September 17, 2003) (*Triennial Review Order* or *TRO*) at ¶¶ 255-279.

²³ See, for example, TRO ¶ 278 ("While copper loops enable carriers to deliver xDSL-based broadband services, FTTH loops significantly enhance the broadband capabilities a carrier can deliver to consumers.")

²⁴ TRO ¶¶ 272-297.

Noting that the FCC does not require ILECs to provide the remedies Covad suggests, the ALJ recommended that the Commission adopt Qwest's proposed language instead. This language requires Qwest, when it plans to replace a copper facility with a fiber facility, to send an electronic notice to CLECs, to post a public notice on its site on the World Wide Web, to file a public notice with the FCC and to comply with any state-mandated requirements. But the language does not provide any additional remedies.

The Department and Qwest support the ALJ's recommendation. Qwest argues that the FCC has already ruled on this question. Moreover, Qwest emphasizes the benefits that consumers will receive from the voice, internet and video services that a fiber-optic network extending all the way to a customer's curb ("fiber to the curb" or "FTTC") or home ("fiber to the home" or "FTTH") can provide. On this basis, Qwest discourages the Commission from taking any action that could burden the deployment of such a network. Moreover, Qwest argues that Covad's proposed language is too ambiguous to be workable.

Covad opposes the ALJ's recommendation, arguing that its own proposal would better promote competition and Minnesota state policy. Covad acknowledges that the FCC does not require incumbent telephone companies to provide the remedy Covad is seeking, but argues that the FCC has not precluded states from requiring it. Covad denies that it is asking the Commission to mandate copper loops, and notes that its proposed language explicitly exempts FTTC and FTTH lines.

C. Applicable Law

An ILEC that proposes to change its network in a manner that would affect a CLEC's service must provide at least six months notice, or provide the CLEC with an opportunity to object.²⁵

States retain jurisdiction over an ILEC's operations.²⁶ The FCC notes:

We stress that we are not preempting the ability of any state commission to evaluate an incumbent LEC's retirement of this copper loops to ensure such retirement complies with any applicable state legal or regulatory requirements.... We understand that many states have their own requirements related to discontinuance of service, and our rules do not override these requirements. We expect that the state review process, working in combination with the Commission's network disclosure rules noted above, will address the concerns ... regarding the potential impact of an incumbent LEC retiring its copper loops.²⁷

The Commission is authorized to prescribe the terms and conditions of service delivery for the

²⁵ 47 U.S.C. § 251(c)(5), 47 C.F.R. §§ 51.325-335.

²⁶ 47 U.S.C. §§ 251(d)(3); § 261(b), (c); 1996 Act § 601(c)(1). The Conference Committee Report for the 1996 Act expounds on the purpose of the uncodified language at § 601(c)(1) as follows: "The conference agreement adopts the House provision stating that the bill does not have any effect on any other ... State or local law unless the bill expressly so provides. This provision prevents affected parties from asserting that the bill impliedly preempts other laws." H. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. 201 (1996), reprinted in 1996 U.S.C.C.A.N. 215.

²⁷ TRO ¶ 284; see also ¶ 271.

purpose of bringing about fair and reasonable competition for local exchange telephone services.²⁸ The Commission should exercise its authority to, among other objectives, encourage economically efficient deployment of infrastructure for higher speed telecommunications services, maintain or improve service quality, promote customer choice, and ensure consumer protections.²⁹

D. Commission Decision

The Commission concurs with the ALJ's recommendation and will adopt it. Covad's proposed language contains too many ambiguities to constitute a workable interconnection term. Moreover, the Commission is not persuaded that Covad's proposed remedies are warranted at this time.

The Commission acknowledges the concern that an ILEC might use its discretion to retire copper facilities for the purpose of disadvantaging competitors that rely on those facilities.³⁰ To guard against this possible anti-competitive behavior, the FCC adopted specific notice requirements and the parties propose notice provisions as part of this ICA, as discussed below. The FCC provides a mechanism to appeal an ILEC's decision; this is in addition to the complaint process offered under Minnesota law. Furthermore, Qwest has indicated that it has no plans to retire copper facilities as it deploys fiber-optic facilities.³¹ The record indicates that Qwest has never ended service to any of Covad customer, in Minnesota or beyond, due to the retirement of a copper loop.³²

When Covad receives notice that Qwest is planning to deploy fiber-optic facilities, and Covad concludes that the deployment is anti-competitive, the Commission's complaint process provides the appropriate forum for seeking redress. Given Qwest's past practice and assurances, and the notices required by federal law and this ICA, the Commission concludes that no additional safeguards are required in this agreement.

Issue 1.B: Should the ICA specify the content of the notice Qwest sends to Covad announcing Qwest's intention to retire a copper facility serving

²⁸ Minn. Stat. § 237.16, subd. 1(a).

²⁹ Minn. Stat. § 237.011.

³⁰ For example, the FCC states in the TRO at ¶ 277:

The record indicates that deployment of overbuild FTTH loops could act as an additional obstacle to competitive LECs seeking to provide certain services to the mass market. By its nature, an overbuild FTTH deployment enables an incumbent LEC to replace and ultimately deny access to the already-existing copper loops that competitive LECs were using to serve mass market customers. In this regard, incumbent LECs potentially have an entry barrier within their sole control (i.e., the decision to replace pre-existing copper loops with FTTH)."

³¹ Proposed ICA section 9.2.1.2.3.1; Tr. 3:92-93; *TRO* at ¶ 249, n. 746 ("[T]he construction of new facilities does not in itself alter a competitive LEC's ability to use the incumbent LEC's network. Qwest explains that it 'does not proactively remove copper facilities in the case of an overlay' so that requesting carriers should be able to continue providing services in these circumstances.")

³² Tr. 2:165-66.

**Covad's retail customers and replace it with a fiber-optic facility?
(ICA Section 9.1.15)**

A. The Issue

All parties agree that Qwest should notify Covad when Qwest plans to retire a copper facility that Covad uses to serve its customers. But they disagree about the content of that notice. Covad proposes a list of items the notice should include; in particular, Covad asks that the notice list the street addresses of the customers to be affected by the proposed network change.

Qwest proposes to continue its practice of identifying the "distribution area" in which the facilities will be retired. With this information, Covad can identify the street addresses of affected parties through the use of Qwest's "raw loop data tool" available at Qwest's site on the World Wide Web. Covad alleges that each time Qwest announces another facility retirement, Covad must conduct up to six hours of research to determine whether any Covad customers will be affected. In contrast, Qwest claims that a search should take only 10 - 20 minutes.

B. Applicable Law

The Commission is authorized to prescribe the terms and conditions of service delivery for the purpose of bringing about fair and reasonable competition for local exchange telephone services.³³

When an ILEC makes changes to its network that will affect a CLEC's performance or ability to serve customers, the ILEC must give public notice that includes, among other things,

- "the location(s) at which the changes will occur,"
- a "description of the reasonably foreseeable impact of the planned changes" and
- the name and telephone number of someone at the ILEC who can provide additional information.³⁴

C. The ALJs' Recommendation

Covad's proposed language on this issue first appears in the record of the case weeks after the hearing.³⁵ Whether for this reason or another, the ALJ observed that the record contains little information regarding why Qwest does not provide the addresses, and why it is burdensome for Covad to acquire them through the use of the raw loop data tool.

The ALJ reasoned that a notice should contain information sufficient to allow a CLEC to determine the street addresses that would be affected by a change. Nevertheless, the ALJ did not recommend adopting the Department's proposal to include such a statement in the ICA. The ALJ concluded that this language is too general to guide the parties' business relationship. Given that Qwest's notices identify the distribution area where the retirement will occur, along with the name and phone number of a person who can provide additional information, the ALJ

³³ Minn. Stat. § 237.16, subd. 1(a).

³⁴ 47 C.F.R. §§ 51.325 - .327.

³⁵ See Updated Joint Disputed Issues List (October 15, 2004) at 1-2.

concluded that Qwest has fulfilled its duty to provide Covad with all the tools necessary to learn which customers will be affected. The ALJ recommended rejecting Covad's proposed list of items to include in the retirement notices.

Covad and the Department oppose the recommendation. Covad argues that unless Qwest identifies which customers will be affected by a proposed network change, Qwest fails to fulfill its duty to identify the location of the network changes and the reasonably foreseeable impacts. Covad and the Department observe that another Bell Operating Company ILEC is able to provide customer address information with its notices. Covad and the Department argue that Qwest has, in effect, shifted to Covad the burden of determining the impact of proposed network changes. This burden is not relieved by the fact that Qwest includes a contact person and phone number in its notices.

Qwest supports the Arbitrator's recommendation. Qwest argues that Covad's list of requirements would be unduly burdensome. In the interest of removing one of Covad's objections, Qwest offers to provide training in the use of its raw loop data tool.

D. Commission Decision

The Commission appreciates the concerns raised by all parties. As the ALJ realized, however, the conflicting record of this issues does not lend itself to a highly-prescriptive remedy. Qwest claims that it can determine which customer addresses are served in a distribution area within 10 - 20 minutes; Covad claims the process takes up to six hours. And neither side is able to justify its own estimate or knowledgeably criticize the others'.

Lacking a more definitive record, the Commission concurs in the ALJ's recommendation to decline Covad's detailed language and to adopt Qwest's simpler terms. But in addition, the Commission will also adopt language similar to the Department's proposal: When planning to retire a copper facility, the notice that Qwest provides to CLECs shall contain sufficient information to enable a CLEC, upon the taking of reasonable actions, to accurately identify the address of each end user customer affected by the retirement. While the ALJ approved of this policy, she found the language to be more general than most ICA language. The Commission concurs with Covad and the Department, however, that Covad should not be expected to expend unreasonable effort to identify which customers will be affected by changes to Qwest's plant. This language expresses the appropriate public policy with as much specificity as the record will support.

Finally, the Commission is gratified by Qwest's offer to provide training in the use of its raw loop data tool. Concerns about whether all parties are bearing their appropriate burdens can be reduced if the burdens themselves can be reduced. If Covad can determine within 20 minutes which of its customers will be affected by a plant retirement, much of the concern about this issue will be eliminated.

Issue No. 9: Timelines (ICA Sections 5.4.1, 5.4.2, 5.4.3)

A. The Issue

If a billed party does not pay undisputed amounts due under the ICA, how long must the billing party wait before pursuing remedial actions such as imposing late-payment charges, or refraining from processing new orders from the billed party, or discontinuing service to the billed party?

(While the proposed language would apply to Covad and Qwest equally, in practice Covad anticipates buying more elements and services from Qwest than Qwest anticipates buying from Covad. For ease of exposition, “billing party” is hereafter referred to as Qwest, and “billed party” as Covad.)

B. Applicable Law

Section 252(b) of the 1996 Act authorizes the Commission to arbitrate unresolved issues and order terms consistent with the Act. In addition, Minnesota Statutes § 237.16, subdivision 1(a), authorizes the Commission to prescribe the terms and conditions of service delivery for the purpose of bringing about fair and reasonable competition for local exchange telecommunications services.

C. The ALJs’ Recommendation

The ALJ recommended that the Commission permit Qwest to –

- begin imposing a late-payment charge if Covad does not pay the amounts due under the ICA by the “payment due date” 30 days after Qwest produces an invoice or 20 days after Covad receives the invoice, whichever is later (ICA Section 5.4.1),
- stop processing Covad’s orders if Covad fails to pay undisputed sums to Qwest for 60 days after the payment due date (ICA Section 5.4.2), and
- discontinue service to Covad, subject to Commission approval, if Covad fails to pay undisputed sums to Qwest for 90 days after the payment due date (ICA Section 5.4.3.).

Regarding Section 5.4.1, the ALJ concluded that permitting Qwest to begin imposing late-payment charges 30 days after the billing date is reasonable. Granting a longer review period might benefit Covad’s cash flow but not its bill review process, the ALJ reasoned, because as a practical matter Covad will not be able to spend more than 30 days reviewing any bill before the next month’s bill arrives. The ALJ also concluded that having separate payment due dates for various aspects of a bill would create administrative burdens. Qwest supports the ALJ’s position, and opposes any exceptions.

The Department generally supports a 30-day period, but recommends extending the payment due date to 45 days for three types of items: 1) line splitting or loop splitting products,³⁶ 2) a missing

³⁶ “Loop splitting” and “loop splitting” both involve a local service provider offering voice service and separate local service provider offering DSL service over the same line. *Line Sharing Order*, 14 FCC Rcd at 20932-35, ¶¶ 39-43.

circuit identification number (circuit ID), and 3) a missing Universal Service Ordering Code (USOC). Covad supports the Department's position, but also recommends a 45-day payment due date for "new products" to apply only for the first 12 months that Covad would order such products. Throughout the seven-state region where Covad has interconnection agreements with Qwest, Covad notes that its collocation bills run 500-700 pages, its transport bills run 850-1260 pages, and its UNE bills fill 30 boxes each month. Auditing these bills is a time-consuming process under the best of circumstances, Covad argues; missing identifying data or unfamiliar products will unavoidably prolong the process.

Regarding Section 5.4.2, Covad and the Department support the ALJ's recommendation to provide 60 days to resolve payment disputes before Qwest could cease processing Covad's new orders. Qwest asks for a 30-day period, whereas Covad initially sought 90 days. The Department argued that 60 days represented a fair balancing of Qwest's interest in prompt payment and the interests of Covad and its customers in having its orders processed; Covad subsequently conceded the merits of the Department's position.

Regarding Section 5.4.3, Covad and the Department support the ALJ's recommendation to provide 90 days to resolve payment disputes before Qwest could discontinue service to Covad. The parties' positions on this section are similar to their positions regarding Section 5.4.2. Qwest asks for a 60-day period, whereas Covad initially sought 120 days. The Department argued that 90 days represented a fair balancing of Qwest's interest in prompt payment and the interest of Covad and its customers in avoiding disconnection; again, Covad subsequently conceded the merits of the Department's position.

Qwest argues that it should be able to stop processing Covad's orders if Covad fails to pay undisputed sums for 30 days after the payment due date, and to discontinue Covad's service if Covad fails to pay undisputed sums for 60 days after the payment due date. Qwest asserts that these periods are commercially reasonable, reflect industry standards, and are incorporated into Qwest's own Statement of Generally Available Terms (SGAT). Qwest argues that the 60-day and 90-day periods give Covad insufficient motivation to make prompt payment, and leaves Qwest exposed to increased risk that Covad will incur a sizable debt and then default.

Covad and the Department counter that late-payment charges already provide an incentive to make timely payments, and that deposit requirements substantially offset the risk of default.

D. Commission Decision

Regarding Section 5.4.1, the parties are in agreement with the ALJ's recommendation that late-payment charges may apply generally 30 days after Qwest's invoice date. The Commission finds this policy reasonable as well. However, Covad and the Department are justified in saying that certain types of bills can be expected to take longer to audit. Specifically, it is clear that bills lacking a circuit ID will take longer to audit because, according to Covad, the first step in the audit is to ask Qwest to identify the relevant circuits for which the bill was rendered. The Commission finds it reasonable to grant 15 additional days for Covad to review these bills. To the extent that Qwest is concerned about the cash-flow consequences of the additional 15 days, Qwest can use greater efforts to ensure that its bills contain the appropriate identifying information.

While Covad and the Department argue to adjust the payment due date for line splitting or loop splitting products, and bills lacking a USOC, Qwest makes persuasive counter-arguments. Qwest

notes that it assigns a unique identifying number to each line over which Covad provides DSL service, and Qwest provides this number to Covad as part of the Firm Order Confirmation and the Customer Service Record. This identifying number can permit Covad to verify the line-sharing products and services for which it is billed.

Regarding missing USOCs, Qwest notes that this is an issue only in its Western region, which does not include Minnesota.

Covad also seeks an additional 15 days for “new products,” but the meaning of and the purpose for this proposal are not well developed in the record. Moreover, while Qwest argues that any adjustment to the payment due date will cause administrative burdens, Qwest’s strongest objections are to the idea of temporary adjustments for new products. Implementing this system would require Qwest not only to identify when Covad orders a product it had not ordered before, but to track how long Covad had been ordering each new product it tries, and to adjust the payment due date accordingly. The Commission will decline to grant any additional variations to the 30-day payment due date at this time.

The ALJ expressed doubt that Covad could benefit from having more than 30 days in which to review monthly bills, given the flow of new bills. However, the record demonstrates that bill review is a complex and time-consuming process involving constant back-and-forth communication between Covad and Qwest; Covad’s staff may be working on February’s billing statement while awaiting Qwest’s reply to inquiries about January’s statement. Covad and the Department reason that additional time would help ameliorate some of the challenges posed by billing items that lack a circuit ID code. The Commission finds that extending the payment due date by 15 days for such billing items, while retaining a 30-day billing period for other items, represents a reasonable balancing of all parties’ concerns.

Regarding Sections 5.4.2 and 5.4.3, the Commission finds the ALJs’ reasoning and recommendations persuasive, and will adopt and incorporate them into this Order.

ORDER

1. The Commission decides the arbitrated issues as discussed in the body of this Order. In summary, the Commission adopts the recommendations of the Arbitrator’s Report except as follows.

Issue 1.B: Regarding the retirement of copper facilities, Qwest shall –

- provide adequate training to Covad on the use of Qwest’s raw loop data tool to enable Covad to promptly identify the address of customers affected by the proposed retirement of a copper facility, and
- when proposing to retire a copper facility, provide a retirement notice to Covad containing sufficient information to enable a competitive local exchange carrier, upon the taking of reasonable actions, to accurately identify the address of each end user customer affected by the retirement.

Issue 9: Regarding the length of time a billing party must wait before imposing late-

payment fees, withholding the processing of orders, or withholding service –

- a billing party shall wait at least 45 days after a bill is rendered before imposing a late-payment fee for an item missing a circuit identification number, or 30 days after a bill is rendered for any other item,
 - a billing party shall wait at least 60 days after reaching a billing dispute before the party may cease processing orders for the non-paying party, and
 - a billing party shall wait at least 90 days after the date payment is due before disconnecting service to a non-paying party's retail customers.
2. The parties shall submit final ICAs containing all arbitrated and negotiated terms to the Commission for review pursuant to 47 U.S.C. § 252(e) within 30 days of this Order.
 3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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CERTIFICATE OF SERVICE

I hereby certify that an original and 5 copies of the Response Testimony of Michael Zulevic and the Response Testimony of Elizabeth Balvin in ARB 584 were sent by U.S. Mail and e-mail this 23rd day of March, 2005, to the following:

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and copies of the foregoing were sent by e-mail and U.S. Mail this 23rd day of March, 2005, to the following addressees:

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